

VERBATIM ¹

RECORD OF TRIAL ²

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

[REDACTED]
(Social Security Number)

PFC/E-3

(Rank)

Headquarters and
Headquarters Company,
United States Army Garrison
(Unit/Command Name)

U.S. Army
(Branch of Service)

Fort Myer, VA 22211
(Station or Ship)

By

GENERAL

COURT-MARTIAL

Convened by _____
Commander
(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON
(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD
(Place or Places of Trial)

on _____
see below
(Date or Dates of Trial)

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23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012, 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012, 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012, 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013, 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013, 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013, 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013, 16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

1 A. This is the portion of the GAL that was on the disk that
2 I looked at earlier. It's -- this is the user name, unit. This is
3 the standard-type text we would have on the end of the GAL, so as you
4 were searching through, if you didn't necessarily know the name, you
5 would have other information. So, for instance, from the first line,
6 you could tell that John worked -- he was a master sergeant and he
7 worked at MNF-I.

8 TC[MAJ FEIN]: Okay.

9 Your Honor, permission to publish 148bravo.

10 MJ: Go ahead.

11 **[PE 148b was published and displayed using the electronic projector.]**

12 Q. Chief Rouillard, do you recognize this document?

13 A. Yes, sir.

14 Q. And what is this?

15 A. This is another portion of that GAL extract. This is
16 actually extract -- it looks -- it appears to be -- have been
17 extracted from the Exchange Server itself, because the first part
18 where it says, "First Administrative Group Recipients," that's
19 similar to Active Directory because Active Directory and Exchange
20 kind of install together. The primary important part here is the
21 last part of that. For instance, John.iraqcentcommil, so
22 John.Black@iraqcentcommil would have been his e-mail address.

1 Q. Now when forces rotated out of Iraq, what happened,
2 typically, to their GAL entry?

3 A. When -- probably 30 days prior, we would start
4 coordination. The short answer is their addresses would come out of
5 the GAL relatively quickly because we didn't want expired e-mail
6 addresses out there or duplicates, and so as these guys would rotate
7 out, within a couple weeks the higher up, so if it was a brigade, the
8 division, or if at the division, MNF-I or USF-I would delete their
9 portion out of their Exchange Server so it wasn't replicated around
10 ----

11 Q. Okay.

12 A. ---- and then they would come out.

13 Q. And from a cyber threat perspective, what potential
14 threats are there with this information being released?

15 A. So just this information, if this is active right now, I
16 can tell user names with -- which then I just need the password. I
17 can also tell what server they're on -- see if this [pause] -- so
18 that there is the server that they're on, so iraqcentcommil. Because
19 it's connected to the unclassified network, or the NIPRNet, I can get
20 to that server from anywhere. I can get to that from anywhere in the
21 world because that's how we design them, so I could then target
22 Lena.Black on that server, but this also tells me the different
23 servers that are -- that they're on, so you can look down towards the

1 bottom where they've got that MND-B, so that's a user off of a
2 different server, and it kind of -- you can then use, like, a basic
3 script and break all these portions up in -- to have different groups
4 of people, so now I know which server they exist on.

5 Q. And if someone has rotated out of theater after this left
6 the possession of the government, then how else could it be used to
7 further foreign adversaries' and spear phishers' endeavors?

8 A. So because our standard operating procedure for all of
9 our signal guys that we teach is to use your AKO e-mail address, the
10 first portion, for the address deconfliction, it would be the same.
11 I could take Tracy.Black or Zachary.Black and just do @us.army.mil
12 and that's their AKO e-mail address or now your mail.mil address and
13 I could still use a similar spear phishing campaign to target you, so
14 if I knew you were in 10th Mountain at the time or ND -- MND-B at the
15 time, we're looking for all personnel that were assigned to MND-B
16 between 2009 and 2011, please reply by filling out this for your
17 unit's -- your meritorious unit commendation. Fill out this basic
18 information, and so that would be another example of a spear phishing
19 technique, because I could -- it's relatively easy to craft --
20 falsify the source, say it's coming from, you know, Army PAO or
21 something, that's a relatively easy technique. I just tell -- I'd
22 connect to a mail server. I could stand up a mail server; create
23 whoever I wanted; send this out with a small pdf or a link to a Web

1 site, "Please connect to this Web site and input your information to
2 ensure you get this certificate of participation in the Iraq
3 campaign."

4 Q. So can you explain, though, this is showing -- you used
5 the example -- and for the record Chief Rouillard underlined the
6 second line from the bottom -- or from the top underlines
7 "centcom.mil" in the second -- excuse me -- the third line from the
8 top. Could you please explain using the same one how does one -- how
9 would one use "Lena.Blackbox@iraq.centcom.mil" to do that after
10 someone's rotated out of theater?

11 **[The assistant defense counsel, CPT Tooman, stood up.]**

12 MJ: Hold on just a minute.

13 Yes?

14 ADC[CPT TOOMAN]: Ma'am, objection based on relevance. This
15 line of questioning would be more in line with the 793 offense; what
16 could or could not happen, that's not relevant for a 641.

17 TC[MAJ FEIN]: Your Honor, the United States is offering this,
18 its relevance is still to value as a fact witness. This goes
19 directly to what could potentially happen, and the United States
20 intends to call Mr. Lewis who's going to talk about foreign
21 adversaries and what they do with our contact information, including
22 e-mails.

1 ADC[CPT TOOMAN]: We would then object based on 701. If we're
2 talking about value, this type of value would require specialized
3 knowledge under 701. Mr. Rouillard's not qualified as an expert
4 anymore, so this sort of testimony wouldn't ----
5 MJ: He's laying factual information at this point. I'm going
6 to overrule it.
7 Go ahead.
8 Q. So to reask the question: You testified that
9 "Lena.Blackbox" -- last name -- "@iraq.centcom.mil" was the e-mail
10 that's listed in this GAL. How does that e-mail -- how would that
11 e-mail then be used by foreign adversaries or spear phishers, because
12 that's the Iraq e-mail and when they rotate out that e-mail no longer
13 exists?
14 A. Right, but the first half of that e-mail, as we've
15 discussed, is the same for your U.S. Army mail ----
16 Q. Okay.
17 A. ---- e-mail address, so I could even do it in a script.
18 I could take this entire GAL list ----
19 Q. I'm sorry. What do you mean by "script"?
20 A. A simple text file -- so scripting language is a way to
21 automate tasks and one of -- like, for instance, a "Python" is one of
22 the languages you can use to script, so I can take an input file, I
23 can extract certain fields, so I can say extract everything after

1 slash cn equals. It'll extract that address, strip off the
2 iraqcentcommil and paste in a @usarmymil and you can actually
3 automate this, but you could just as easily go in and handcraft it
4 and change any of these e-mail addresses to @us.army.mil and have a
5 high likelihood of having their e-mail address, if they're active
6 now, if they're in the active duty now.

7 Q. Okay, and who -- why would foreign adversaries want the
8 GAL?

9 A. To target military personnel to get them to click the
10 links.

11 Q. And you mentioned earlier social engineering. How would
12 a social engineering attack work?

13 A. So, first, I find an audience that I want to target, or
14 an adversary, and for this instance I'm using Army, so these are all
15 Army people or Army-affiliated personnel, so I send an e-mail with a
16 Web link or a pdf or something similar to that add -- that e-mail
17 address ----

18 **[The assistant defense counsel, CPT Tooman, stood up.]**

19 MJ: Yes?

20 ADC[CPT TOOMAN]: Sorry, Chief.

21 Your Honor, this, I think, goes beyond the scope of
22 laying the factual foundation, so we would object on -- object on
23 701.

1 MJ: Overruled.

2 Go ahead.

3 A. So the user would then receive the e-mail in their box.
4 It could appear to come from anybody we want it to come from. They
5 see this e-mail comes -- it could be, for instance, we're evaluating
6 -- I saw in the *Army Times* we're evaluating a -- going to a new -- a
7 single ACU pattern, so it could be, "Visit this site for a selection
8 of five ACU patterns and we're going -- we're just doing a public
9 survey to see which one you would like," and it could come from,
10 again, PAO or a civilian company; and so many Soldiers would then
11 click that link, taking them to a Web site which might actually have
12 five different patterns of ACU patterns to select from, and when they
13 click one, it says, "Thank you. Insert name here for selecting the
14 ACU," and give some type of actual count back, but it's also
15 collecting information on the machine that they're on. It could
16 attempt to download malicious code into their box. It could do a
17 number of things, because I've tricked you into going to a site you
18 wouldn't normally visit, which is why we invest so much in the
19 yearly, mandatory training for this type of attack.

20 Q. Chief Rouillard, are you familiar with the program
21 "Wget"?

22 A. I am.

1 Q. And how is Wget used when it comes to social engineering
2 attacks?

3 **[The assistant defense counsel, CPT Tooman, stood up.]**

4 MJ: Yes?

5 ADC[CPT TOOMAN]: Objection; relevance. PFC Manning is not
6 charged with using Wget for a social media attack.

7 MJ: What is the relevance?

8 TC[MAJ FEIN]: Your Honor, the relevance is that Chief Rouillard
9 has specialized knowledge about Wget. This is just laying the
10 foundation to ask subsequent questions on how he knows Wget and to
11 ask some functionality questions about Wget.

12 MJ: What does the malicious spyware have to do with any of
13 this?

14 TC[MAJ FEIN]: I'm sorry, Your Honor. I don't understand.

15 MJ: You're -- I thought you were -- what was your last
16 question?

17 TC[MAJ FEIN]: Ma'am, I can rephrase the question, if that's the
18 issue.

19 MJ: All right, just move beyond that.

20 TC[MAJ FEIN]: Yes, ma'am.

21 MJ: If he's going to talk about the program itself, that is
22 relevant.

1 ADC[CPT TOOMAN]: Your Honor, we would say it would be
2 cumulative. We've heard a lot about Wget.

3 MJ: Overruled.

4 TC[MAJ FEIN]: Chief, I want to break -- first, I'm going
5 to remove from the -- and return to the -- remove from the projector
6 and return to the court reporter Prosecution Exhibit 148bravo and
7 Prosecution Exhibit 147bravo **[handed exhibits to court reporter]**.

8 Q. Are you familiar with Wget?

9 A. Yes, sir.

10 Q. What is "Wget"?

11 A. "Wget" is an application or a program -- Wget's a program
12 that will download a static copy of Web content, such as a Web site
13 or a SharePoint site and will download however much of it you tell to
14 download. So if I say execute Wget against PAO.Hood.army.mil, it
15 will download a static copy of the entire public-facing Web site to
16 my computer.

17 Q. And can you please explain for the court, again, very
18 briefly, ----

19 A. Uh-huh **[affirmative response]**.

20 Q. ---- how have you used Wget in a Windows environment or
21 just Wget in general in your job as a cyber threat analyst?

22 A. So ----

23 Q. Excuse me, a OPFOR cyber threat.

1 A. Yes, so -- so for us, we use Wget -- so -- there's two --
2 there's two versions. There's a Windows version and a Linux version.
3 The Windows version is not installed by default. You have to put it
4 on there, but once I put -- other than that, the functionality is the
5 same, but because our guys are comfortable with Microsoft Windows, we
6 tend to install that and have -- use that; but when you run Wget and
7 download the page, it lets you grab the entire page. One of the
8 reasons we use it is when we're doing the open source intel gathering
9 on a site, I can download the Web page; I can then take that Web page
10 and feed it into a script, again, that will break the Web page up
11 into a bunch of words or a dictionary file. I then use that
12 dictionary file against user names that I have in an attempt to use
13 those words as passwords. So something that was pertinent to that
14 unit, for instance, if their motto was "Blackjack," then the
15 commander might have his password as "Blackjack6!" So my program
16 will take words that are relevant to them, do what we call a little
17 bit of "mangling," so change "E's" to "3s" and such and then run that
18 dictionary file against user accounts in an attempt to guess a
19 password.

20 Q. And this is in your OPFOR capacity?

21 A. Yes, sir. Yeah; this is all as attack methodology.

22 Q. And with that, do you have authorization to use Wget on
23 y'all's computers if you have to install it?

1 A. We do. We -- you have to actually -- you have -- you
2 have to be -- it's not part of the normal Army load, so it's not an
3 authorized tool that Army users encounter. It's only for -- as far
4 as the Army is concerned, the only people that I'm aware of that use
5 it are pen testers and OPFOR.

6 Q. And when Wget runs in the Window environment on the
7 screen, what does it look like?

8 A. It -- it's a command-driven tool, so it's a command-line-
9 tool-type thing. It's not a normal, gooey, Window thing that we're
10 used to, and so it's a black box on the screen, which is your command
11 window, and then it's just -- it'll look like a bunch of typed
12 commands, so if you squinted down or read through the commands, you
13 would see that it was actually -- it would say Wget something, but
14 otherwise it just looks like a command prompt screen with text
15 written on it.

16 Q. And when you said squint down, what did you mean?

17 A. Well, because by default when you open up a command -- a
18 command prompt, the text is relatively small, so 5, 6 feet away, I
19 can't read a command prompt screen that's -- like I couldn't read one
20 on his computer if I was standing here **[referred to court reporter's**
21 **computer]**.

22 Q. When Wget is running, does it have across the top of it
23 in big letters "Wget"?

1 A. No, sir. It -- it has a -- it has the page that's
2 downloading and then some status messages, but there's not a big
3 announcement that Wget is running.

4 Q. And can Wget be running in the background?

5 A. It can.

6 Q. And what does that mean?

7 A. So Windows gave us the capability to run multiple things
8 at once, and so on the top of all Windows, there's a little icon that
9 looks like a bar. If you click that, it's called what minimizes it
10 and moves it down, but you could just as easily drag Internet
11 Explorer in front of it. That's why you can browse the mail and
12 check your Web at the same time.

13 Q. Are you familiar with "mIRC chat"?

14 A. Yes, sir.

15 Q. How are you familiar with mIRC chat?

16 A. **[Pause]** So ----

17 Q. In your official capacity within the Army.

18 A. In my official capacity, we used mIRC chat in 2003/2004
19 and with -- in 2007/2008, on both deployments we used mIRC chat with
20 my AFATDS or the artillery guys to coordinate with other units for
21 their artillery fields of fire or whatever.

22 Q. And when you say "we," who's "we"?

23 A. The ----

1 Q. You said "we" used.
2 A. Oh, 1st Cav, sorry.
3 Q. The division headquarters?
4 A. The division headquarters, ----
5 Q. Okay.
6 A. ---- yes, sir. And so they coordinated with the Air
7 Force because it was a tool the Air Force was using and that's what
8 they chose because it's a -- it's actual -- it's also a tool that is
9 used just for text chatting and -- but with Army systems in theater,
10 the only system I saw it on was the AFATDS.
11 Q. And what did -- so when mIRC chat runs, what does the
12 screen look like?
13 A. The application has a distinct look. It'll say "mIRC
14 chat." It'll have users and channels on one side. It'll have a text
15 field in the middle with the chats scrolling up and down and you can
16 kind of tell chats going on.
17 Q. And you mentioned if you were sitting there looking at
18 the court reporter's computer, you couldn't see Wget. Could you see
19 mIRC chat running?
20 A. I could see mIRC chat running. I would probably have to
21 look a little closer to see if it was mIRC chat, but because it's a
22 Window application and it has a -- if you had seen mIRC chat before,
23 you would know what it would look like. If you had never seen it,

1 then you wouldn't know that -- just from a glance that that was mIRC
2 chat, but if you had ever seen mIRC chat before, you would know that
3 was mIRC chat.

4 **[Pause]**

5 TC[MAJ FEIN]: Your Honor, may I have a moment?

6 MJ: Yes.

7 **[The trial counsel conferred with cocounsel.]**

8 TC[MAJ FEIN]: Your Honor, the United States has no further
9 questions.

10 MJ: All right.

11 Just for the record, the -- this witness was accepted as
12 an expert in the GAL and cyber security, so when the court allowed
13 the testimony that was objected to, it's on that basis.

14 Go ahead, cross-examination?

15 ADC[CPT TOOMAN]: Ma'am, the defense requests a 10-minute
16 comfort break before we begin.

17 MJ: All right.

18 Chief, during the comfort break, please don't discuss
19 your testimony or knowledge of the case with anyone while we are in
20 recess.

21 WIT: Yes, ma'am.

22 MJ: All right, anything else we need to address?

23 TC[MAJ FEIN]: No, ma'am.

1 MJ: Court is recess.

2 [The court-martial recessed at 1703, 17 June 2013.]

3 [The court-martial was called to order at 1715, 17 June 2013.]

4 MJ: Court is called to order. Let the record reflect all
5 parties present when the court last recessed are again present in
6 court.

7 Defense, are you ready to proceed?

8 ADC[CPT TOOMAN]: Yes, ma'am.

9 MJ: The witness is on the witness stand.

10 **CROSS-EXAMINATION**

11 **Questions by the assistant defense counsel [CPT TOOMAN]:**

12 Q. Chief.

13 A. Sir.

14 Q. Now, Chief, you spoke a little bit about a few programs,
15 Wget, mIRC chat. You're not aware what programs the S-2 section at
16 2-10 Mountain allowed during their deployment, right?

17 A. The S-2 specifically?

18 Q. Right.

19 A. No. The Army has a pro -- a policy that governs what
20 software goes on our Army machines and govern from that policy with a
21 standardized, across the Army, yes.

22 Q. Okay, but you don't know if the commanders from 2-10
23 Mountain, specifically the S-2 section, you don't know if they

1 deviated or allowed deviations from that. You have no knowledge of
2 that?

3 A. I have no personal knowledge, no.

4 Q. [Pause] Now you spoke a little bit about the Active
5 Directory. Now, it's fair to say that the Active Directory can exist
6 without the GAL, correct?

7 A. Correct.

8 Q. But the GAL can't exist without the Active Directory.

9 A. [Pause] So not entirely true.

10 Q. Okay.

11 A. Active Directory is for user accounts and how we log in
12 to our machines. Again, the GAL is just e-mail addresses, so, for
13 instance, Hotmail or Gmail or any of the free mail providers, they
14 have a -- what you would call -- what we're identifying as a GAL, a
15 list of e-mail addresses, there is a GAL that exists even though you
16 don't have an Active Directory account. So with military systems
17 specifically, we fielded as a complete Enterprise-level package, so
18 normally you get an Active Directory account and an e-mail address
19 and they're linked, but you don't have to.

20 Q. Sure. And that link would have existed, in your
21 experience, in the deployed environment.

22 A. Deployed -- in the strategic and in the deployed, yes.

1 Q. Right. So downrange, you wouldn't have a GAL without the
2 Active Directory.

3 A. Correct.

4 Q. Okay. Now the Active Directory has other uses, doesn't
5 it, beyond just providing ----

6 A. Sure.

7 Q. ---- a mechanism ----

8 A. Absolutely.

9 Q. ---- for a GAL?

10 A. Yes.

11 Q. What else do you get to do because you have an Active
12 Directory?

13 A. The Active Directory allows us to manage users for
14 permissions, for instance. You may be allowed access to certain
15 files or certain folders on SharePoint. You can go to certain parts.
16 We also use the Active Directory to manage the security controls for
17 machines inside of that, because not only do users have accounts in
18 Active Directory, but also all of the machines, all the laptops or
19 all the workstations that are part of that domain are in the Active
20 Directory, printers. Various objects exist in Active Directory other
21 than e-mail addresses and users.

22 Q. Sure. So when I get an Active Directory account, that
23 allows me to log on to a machine.

1 A. **[No response.]**

2 Q. Right?

3 A. Yes.

4 Q. It allows me to create a Word document.

5 A. Well, the Active Directory gives you access to the laptop

6 ----

7 Q. Right, and the laptop has Word or some other ----

8 A. Sure.

9 Q. ---- software on it.

10 A. Yeah.

11 Q. And I -- and I can't get to those programs unless I have

12 **[pause]** ----

13 A. Not true.

14 Q. ---- access to it.

15 A. So I can log in locally to a machine. So a machine --

16 for instance, a machine that's part of Active Directory that's in the

17 domain in the normal tactical or strategic environment, if you had

18 local login access, you could unplug the machine from the network and

19 log in locally with a local user account and still access the -- many

20 of the same files and everything else.

21 Q. Okay, but -- so I may be able to do that, but I couldn't

22 print.

1 A. Uh -- you could, without being part of Active Directory
2 -- if you were still plugged into the network, I could ----

3 Q. If I'm still -- yeah, right. So I'm still plugged into
4 the network.

5 A. If I plug into the network but I log in locally. So I'm
6 not part of the domain, I just log in with a local user account, I
7 can still print; I can still visit Web sites; I can still run
8 programs on my machine. I may not be able to do domain-specific
9 services, such as access restricted areas of SharePoint or access
10 e-mail if I -- if I'm on a machine that's not part of the domain or
11 if I'm logged in locally and I try to open up my e-mail it's -- I'm
12 going to get a prompt for what we call "domain credentials." It's
13 then going to ask for a domain user, domain password, which if I
14 don't have I'm not going to get into the e-mail.

15 Q. Okay. So it would allow you to -- you would need the
16 Active Directory to get into anything in that domain, so that could
17 be shared drives?

18 A. Potentially, depending on how the shared drive was
19 configured. So if the shared drive was just configured with a
20 password, then all you need is a password to connect.

21 Q. Is that typically how ----

22 A. Sometimes. It really depends on how its individual user
23 -- if you're at home on your home machine, you open up file Explorer,

1 right click "Share your Movies" drive, for instance, now the rest of
2 your family can get to your movies drive without having Active
3 Directory running in your house.

4 Q. Right. That's not how the Army does it, though. We
5 don't right click and share ----

6 A. That's not our ----

7 Q. ---- folders.

8 A. That's not our normal standard implementation, but it still
9 occurs on Army networks.

10 Q. Right, the shared drives that we're used to as users are
11 connected to the -- are connected to the Active Directory.

12 A. Again, it depends on the -- on the system. A lot of the
13 PM systems aren't integrated into Active Directory until 2007, I
14 believe. CPOF, which is a primary tool, Command Post of the Future,
15 there's a Wikipedia explanation, a real brief one of what it is, but
16 basically it's our command and control tool. Until recently, that
17 wasn't using Active Directory logins, so it really depends on the
18 system that you're talking about; but for the average workstation of
19 the user, the average workstation would be part of the domain, unless
20 there was a reason that our security controls would break it. So a
21 good example of that would be the S-1 system -- I don't recall the
22 name of it -- but their system, if we implemented security --
23 specific security controls on there, their system would no longer

1 function, people couldn't get orders and that type of thing, so we
2 excluded those from the security push from the domain.

3 Q. And shared drive is another example of something that's
4 connected to the -- to the Active Directory.

5 A. Yes, but you could have either/or. It really depended

6 ----

7 Q. Okay.

8 A. ---- on who set up the share and how they set it up, so
9 normally we would set it up using Active Directory accounts to
10 control the access to that shared drive, but it didn't have to be.

11 Q. And do you have any knowledge of how the Active Directory
12 was set up in 2009 and 2010 in Iraq?

13 A. Other than how we train all the Soldiers to do it, no.
14 So I know from the training perspective, we train all of the people
15 who configure the systems, we train them all at Fort Gordon and
16 that's who I was teaching from 2008 through 2011.

17 Q. You don't have any direct knowledge of how much time or
18 how many resources were used to input users into the GAL in 2009 and
19 2010, the Iraq GAL.

20 A. So I can ----

21 Q. I think you talked about your time at 1st Cav, but you
22 don't have any knowledge of what was going on with respect to how
23 much time it was taking to do those tasks in 2009 and 2010.

1 A. So it's the same task, same -- whether it's me or
2 somebody in 2d Brigade, 10th Mountain, or somebody at the NOSC, if
3 they're creating user accounts, they're certain steps you have to do.
4 That process is about 10 to 15 minutes.

5 Q. It would take you less time than it would take me.

6 A. Sure, but it -- it's -- after you did it ten times, you
7 would do it as fast as anyone -- think of it like changing a tire.
8 So if I was going to change the tire on my car, the first time I sat
9 down to change the tire on my car it would take me a while; it might
10 take you a while. It might take us a different amount of time.
11 After we changed 25 tires, we'd both be about the same speed.

12 Q. Now you mentioned on direct that there is -- there are
13 automated tools that can be used to do that; is that right?

14 A. There are. You can script the creation of user accounts
15 and e-mail boxes into Active Directory. Prior exper -- my personal
16 experience is most of us admins are basically too lazy to do it and
17 we would rather click 2- or 300 times and use up the time to go
18 through and do that, because the automated tools, a lot of times
19 it'll take us 6, 8, 10 hours to work through the script on how to
20 properly import all that data, so rather than taking 6 to 8 hours to
21 learn how to write the script, we take the 15 minutes per account, we
22 spread it out between three or four guys, and they just click
23 through.

1 Q. It's possible that there might be someone who is good at
2 writing scripts and they could just do it in a few minutes and it'd
3 take a lot less time.

4 A. Possible; improbable.

5 Q. Okay.

6 And when you say "writing a script," what -- what sort of
7 program would be used to write that script?

8 A. So with Exchange, Exchange runs on Microsoft, and so
9 PowerShell is the primary tool that we use now, and it's very -- it's
10 a com -- it's somewhat complex language. It's easy to begin with and
11 then gets more complex as you go on, but primarily you would use
12 PowerShell as the scripting language because that would be what was
13 on the server, on the Exchange Server.

14 Q. So there's no, per se, prohibition against using scripts
15 and automating processes on a -- on a system.

16 A. There's no prohibition against using PowerShell script on
17 a system, but other scripting languages, such as Python or Ruby or
18 one of those other type of scripts that are used a lot wider, those
19 have to be installed and, again, you have to have prior authorization
20 from your G6 to install those and a reason why you need those.

1 Q. Right.

2 Now you talked about when you were talking specifically

3 about the GAL in this case, you talked about some of the threats with

4 respect to having an individual's name.

5 A. Uh-huh **[affirmative response]**.

6 Q. And if you have the name, then you only have to figure

7 out the password, ----

8 A. Right.

9 Q. ---- right? That's ----

10 A. Yes.

11 Q. ---- one of two pieces that you need.

12 A. Half the puzzle, yes.

13 Q. Half the puzzle. Are there protections to prevent a

14 nondomain computer from logging on to an Army domain?

15 A. So the user account ----

16 Q. So if I ----

17 A. I may not be understanding your question, but the user

18 account identified in the GAL doesn't have anything to do with a

19 computer -- so if I wanted to exploit that, for instance, there may

20 be potential blocks -- if it's a public-facing server, then I can use

21 that account to log in; if the server is able to be -- so a lot of

22 the standard deployments was the SharePoint Server was accessible

23 from the garrison because, 1st Cav as an example, we had personnel on

1 Fort Hood and at Iraq that were accessing the SharePoint Server, so
2 we would create an account, allowed them access from the outside. Due
3 to the escalation of the threat in the cyber domain, we have since
4 prevented a lot of that type activity, but 3 -- 2, 3 years ago, those
5 firewalls and the access list and stuff that would block that access
6 normally were not in place.

7 Q. But one would have to get access to the network before
8 they could try to figure out the password, correct?

9 A. Correct; however, again, that user account that's
10 identified in the GAL was also your U.S. Army mil account, so I could
11 use that to attempt to log in as you against the www.us.army.mil, so
12 until we went to actually using the CAC cards, I could use that user
13 information not just to access the tactical environment but also your
14 www.

15 Q. Now you talked about sort of that, I guess, trying to
16 hack in to e-mails. The Army e-mail format's pretty well known,
17 isn't it?

18 A. Um -- I don't know. It's -- it's fully known to us in
19 the military. I mean, I see it all the time, but I guess the best
20 example is with common names, right, so somebody could probably guess
21 mine because I'm a somewhat unique name, but for Jeffrey Smith or,
22 you know, Susan Johnson, there might be a large number of those, and
23 so then what is -- what is their sequence? The bigger threat is that

1 those accounts with that GAL identified what specific server they
2 were on, so not just the U.S. Army mil account, but if they could
3 access any of the Iraq servers because they were part of the NIPRNet
4 domain on the unclassified network, if you could reach that server,
5 you could attempt to exploit using those against that actual server.

6 Q. Weren't there protections in place to prevent someone
7 from accessing those servers in Iraq?

8 A. So, again, in 2007/2008, no. Now, most likely there are,
9 yes.

10 Q. Any knowledge of what -- what the deal was in 2009/2010?

11 A. I -- no.

12 Q. You would agree with me that it's pretty easy to find the
13 Army e-mail address format, though; you would agree with that?

14 A. Sure.

15 Q. And as far as names, it's -- one could really just put
16 John.Smith and then John.Smith1, John.Smith2, John.Smith3, and all
17 the way up.

18 A. Right, so the real danger of the amount of information,
19 we call this "classification by" -- I forget the other term. When I
20 take a bunch of similar information -- we do this the same thing with
21 our network configurations -- when I take a bunch of disparate
22 network configurations which are unclassified and I combine them all
23 into one location, then that document actually becomes a classified

1 document because of the amount of damage and the potential amount of
2 exploitation that could happen from that. So ----

3 Q. Well the GAL wasn't classified, was it?

4 A. No, the GAL was not classified, but it's more than -- the
5 threat is more than that single e-mail address, because although I
6 might know your e-mail and my e-mail, here I now have a list of
7 150,000 e-mails and so I may not be able to get two, five, ten people
8 to click, but if I send out 150,000 e-mails, much higher chance of
9 somebody clicking that link.

10 Q. You talked about there being a threat that someone might
11 try and send an e-mail from a commander.

12 A. Uh-huh **[affirmative response]**.

13 Q. Commanders' names are on the Web. That's ----

14 A. They are.

15 Q. ---- common knowledge.

16 A. Yes.

17 Q. And you also mentioned that someone might take the unit's
18 motto and try variations of that as the password.

19 A. Uh-huh **[affirmative response]**.

20 Q. Those unit mottos are also on the Web.

21 A. Sure. However, again, when I was talking about Wget
22 scraping the page, I used that as an example, but there's a lot more
23 information in there, so it might talk about the commander likes

1 fishing or the commander likes to snowboard or he, you know, he was
2 stationed here or there, and so a lot of those words -- and this is
3 the technique that we use even today -- scraping that entire page
4 gives me that file with all words that -- rather than running a
5 standard dictionary attack, which is, you know, just normal words in
6 the dictionary, I can have a much more targeted list against that
7 individual user who is tied to that whatever it is.

8 ADC[CPT TOOMAN]: One moment, please, Your Honor.

9 MJ: Uh-huh **[affirmative response]**.

10 **[Pause]**

11 Q. Now in your -- in the response you just gave, ----

12 A. Uh-huh **[affirmative response]**.

13 Q. ---- you're assuming that Wget was used to pull the e-
14 mail addresses in this instance, in this case.

15 A. No. So Wget scrapes Web sites. I'm unsure as to the
16 tool that extracted the GAL. I don't think it was Wget. It was --
17 there are other tools that will extract that type of data out of
18 servers, if you have a connection, like an L -- it's called an "LDAP"
19 query, so Lightweight Directory.

20 Q. Now when you talk about Wget going and getting a Web
21 page, ----

22 A. Uh-huh **[affirmative response]**.

1 Q. ---- it's going to get something that's in the open
2 source, right?

3 A. It will -- it will get whatever you have access to, so
4 ----

5 Q. So if the 1st Cav Web site says the commander likes
6 fishing, that's something that's on the 1st Cav Web site.

7 A. Correct, but ----

8 Q. It's not -- Wget's not grabbing something that's not
9 there.

10 A. Correct.

11 Q. In that instance.

12 A. But if ----

13 Q. Okay.

14 A. ---- if I'm in a tactical environment and let's, you
15 know, put nefarious hats on, for instance, if I use Wget to scrape
16 the SharePoint site, I'm going to download the entire SharePoint site
17 with all of the files that make up that SharePoint site that I have
18 access to.

19 Q. Now you're familiar with archive.org, what's known as the
20 "Way Back Machine"?

21 A. Yes, sir.

22 Q. And Wget is the type of program that is used to populate
23 that Web site. It goes out and it grabs whole Web pages.

1 A. Okay.

2 MJ: Do you know that or not?

3 WIT: I do not know that for a fact. I would -- I would accept

4 that answer.

5 MJ: Do you know it or not?

6 WIT: I do not; no, ma'am.

7 MJ: Move on, please.

8 Q. Now, Chief, there's -- if a Soldier wanted to download

9 all the e-mails from his brigade, he could do that.

10 A. What do you mean by all ----

11 Q. If he wanted to get all the e-mails ----

12 A. All the e-mail addresses?

13 Q. All the e-mail addresses from his brigade, he could do

14 that.

15 A. He could; yes, sir.

16 Q. There's never been any sort of direction or directive

17 that went out that said you can't download e-mail addresses off the

18 GAL.

19 A. There has not.

20 ADC[CPT TOOMAN]: No further questions; thanks, Chief.

21 MJ: Redirect?

22 TC[MAJ FEIN]: Yes, ma'am.

DIRECT EXAMINATION

Questions by the trial counsel [CPT FEIN]:

Q. Chief, you testified a few moments ago about common Army e-mail formats.

A. Yes, sir.

Q. Are the user names, the portion that comes before the "@" symbol, is that information in bulk available to the public?

A. It is not; no, sir.

Q. And then also as far as your best knowledge about the authority Soldiers have of downloading the Global Address List book, is it your experience or your knowledge of the regulations that allows someone to do that and then transmit it to their personal computer and use it for personal gain?

A. No, sir. So part of the configuration for the Outlook Client that the Army uses is we call it offline -- the offline address book and the offline files, if you become disconnected from the network, there's a cache copy on your machine that allows you to continue working. I haven't had anybody download the GAL to their personal machine or to a government machine; and moving it to a personal machine would be against the rules. We don't -- we don't allow moving government-type files and that would fall under a government file, to your personal machine.

1 TC[MAJ FEIN]: Thank you.

2 No further questions, ma'am.

3 ADC[CPT TOOMAN]: One or two, Your Honor.

4 **RECROSS-EXAMINATION**

5 **Questions by the assistant defense counsel [CPT TOOMAN]:**

6 Q. Chief, if I logged on my personal computer and wanted to
7 download a list of the e-mails of all the other judge advocates in
8 the United States Army would that be against the rules?

9 A. Would it be against the rules, no, sir.

10 ADC[CPT TOOMAN]: Okay, thank you.

11 MJ: Any final redirect?

12 TC[MAJ FEIN]: Your Honor, may I have a moment?

13 MJ: Yes.

14 **[The trial counsel conferred with cocounsel.]**

15 **REDIRECT EXAMINATION**

16 **Questions by the trial counsel [CPT FEIN]:**

17 Q. Chief, in reference to the very last question, ----

18 A. Yes, sir.

19 Q. ---- again, based off your personal knowledge, is a
20 Soldier authorized to use their NIPR machine to download the entire
21 GAL, move it to their personal computer for the purposes of giving it
22 to a corporation, a company, ----

23 A. Right, no, sir.

1 Q. ---- someone outside the U.S. Government?

2 A. And so it goes to intent. What do you intend to do? If
3 you are downloading the GAL to use on your personal machine because
4 your machine is going in for repair, it may be okay to have select
5 individual addresses. There's -- there's not a reason to have the
6 entire GAL on your personal machine ----

7 Q. Why?

8 A. ---- that I'm aware of.

9 Q. Why?

10 A. Well, the potential for abuse. I don't know that your
11 machine is base lined or is kept in the appropriate patches, so if
12 your machine is compromised and you've moved the entire GAL from any
13 theater down to the brigade to your personal machine and your
14 personal machine is compromised because your kid plays *Whack a Mole*
15 on a site, now the enemy has that address list and can exploit --
16 again, back into the whole spear phishing and targeting of us, so
17 that's why we don't allow people to do that. That's also why on the
18 AKO site, all Army users are allowed to install antivirus software,
19 Norton antivirus and all that on your machine. We want person --
20 personnel's machines to be protected at home. They'll issue you a
21 CAC card so you can check your mail, but it goes to intent and that's
22 one of the big things in the cyber domain is if you have physical

1 access, it's really hard to stop a maliciously intended person
2 because they can do things regardless of technical prevention.

3 Q. And in 2008, when you last left Iraq, was a user -- did
4 the user have the capability on their personal computer to log on to
5 the USF-I domain and download e-mails?

6 A. Negative, because if ----

7 Q. For their own personal use.

8 A. ---- if you connected your personal machine into the
9 government network, that was treated as a -- as a spillage basically
10 for us at 1st Cav, and it was the same as if you took your NIPRNet
11 machine and plugged it into the SIPRNet; you would get a visit from
12 the G6, "Why are you plugging your personal box in here?" A report
13 and everything generated ----

14 Q. What about at that time through a WebMail interface that
15 connects to the Exchange in Iraq; did that exist?

16 A. It did not exist to my knowledge.

17 TC[MAJ FEIN]: Thank you.

18 **EXAMINATION BY THE COURT-MARTIAL**

19 **Questions by the military judge:**

20 Q. Let me just target you there. It did not exist in 2008
21 or it did not exist in 2009 and 2010?

22 WIT: I cannot speak definitively that it did not exist in 2009
23 and 2010, but that was not part of our normal configuration to allow

1 WebMail access because of the attack factor; and if you did access
2 your mail through the WebMail, then the address book is built into
3 the WebMail and you wouldn't need it on your personal box because
4 it's part of the WebMail Client.

5 MJ: I asked a follow-up to yours. Do you want to -- have any
6 follow-up questions based on what I have and then I'll turn it over
7 to you?

8 TC[MAJ FEIN]: Yes, ma'am.

9 **REDIRECT EXAMINATION**

10 **Questions by the trial counsel [CPT FEIN]:**

11 Q. As recently as today and after 2010, is there a WebMail
12 interface for the Iraq domain?

13 A. Not to my knowledge.

14 TC[MAJ FEIN]: Thank you.

15 MJ: Go ahead.

16 ADC[CPT TOOMAN]: Thank you, Your Honor.

17 **RECROSS-EXAMINATION**

18 **Questions by the assistant defense counsel [CPT TOOMAN]:**

19 Q. Chief, what rule says that a user can't download e-mail
20 addresses?

21 A. There's -- again, there's not a rule to prevent you from
22 downloading the e-mail addresses, but you would have to address the
23 intent. Again, we don't write rules for everything. There's not a

1 rule saying you can't download every document on the SharePoint
2 Server, but if you did that, you would get a visit -- normally, you
3 would get a visit due to the amount of data that you're collecting,
4 the question would be why do you need that amount of data, so the
5 same principle applies to the Global Address List, why are you -- the
6 command, if that was scrutinized, and they would say, "Why are you
7 downloading 175,000 e-mail addresses for your personal thing where
8 anytime you would use those addresses you would be connected to the
9 military system that would have the address book there for you and
10 you wouldn't need it on your -- on your personal machine.

11 Q. Chief, if your intent was I just want to see if I can do
12 it, that'd be okay, wouldn't it?

13 A. It wouldn't necessarily be okay; no, sir. We don't allow
14 people to just do things because they want -- again, that -- do I
15 download the entire SharePoint Server, and I use that because it --
16 it's another big part of our Enterprise services. So if I allow --
17 if I go back to the secure facility, to the Nolan Building, and I
18 download the entire SharePoint Server that's on the SIPRNet, I will
19 get a visit from my S-2 guys and say, "Why are you downloading all
20 this data; what are you planning on doing with it?" because the
21 logical assumption is you are going to do something with all of that
22 data, so the same principle applies to the GAL.

1 Now, there's not a specific monitoring tool that would
2 watch -- there's not a technical implementation to watch who's
3 downloading the entire Global Address List because it's a feature
4 that most people don't download and it's not a serious system
5 inconvenience when you download the whole GAL because it's only a few
6 meg, but if you were to download the entire SharePoint Server that
7 you had access to, you would probably get a visit.

8 Q. So there's not -- there's not a big suck on resources to
9 download the GAL.

10 A. There's not a huge impact on resources to do the physical
11 downloading of the GAL, correct.

12 Q. And there's no rule that says if your intent is just I
13 want to see if I can do it, there's not a rule that says you can't.

14 A. There's not a rule written that says you cannot.

15 Q. And then if you deleted it after you figured out how to
16 do it, that would suggest that the intent was ----

17 TC[MAJ FEIN]: Objection, Your Honor -- excuse me, Your Honor --
18 as speculative.

19 MJ: Well let's hear the question.

20 Q. If the -- if the file was deleted after it was downloaded
21 and it was done, what would that say to you about the intent?

22 MJ: Well -- all right, don't answer that.

23 ADC[CPT TOOMAN]: Nothing further.

1 MJ: Redirect?

2 TC[MAJ FEIN]: No, Your Honor.

3 CDC[MR. COOMBS]: Your Honor, just on that last question, and I
4 understand, that was going towards the fact that he's a cyber threat
5 expert, so he talked about intent; he talked about whether it would
6 be wrong or right, depending upon the intent, and so as a cyber
7 threat expert, if what he saw was the person downloaded it then
8 deleted it, would that ----

9 MJ: And that would give him absolutely no idea of what the
10 person's intent was.

11 CDC[MR. COOMBS]: But from a cyber threat standpoint, then, when
12 he's -- when he's testifying that something might be wrong if you did
13 a certain act, in this instance he's saying, well, it's --
14 downloading the GAL is not a problem but if you have all this
15 information we'd want to know why you have that, and then that might
16 cause G6 or somebody to come to you and ask you a question, like, why
17 are you doing this? And so in this instance, the issue here is
18 steal, purloin, knowingly convert, so if the facts were that the
19 information was deleted immediately, what would that tell him as a
20 cyber expert, so that's what that question was going towards.

21 MJ: All right. It's still overruled.

1 **EXAMINATION BY THE COURT-MARTIAL**

2 **Questions by the military judge:**

3 Q. I do have a question for you, though. I'm still
4 confused. I thought you answered to the government a little bit
5 earlier that if a Soldier wanted to download the e-mails, all of his
6 e-mail addresses from the brigade -- or you answered to the defense
7 -- the Soldier could do it. There's no directive saying you can't.

8 A. There -- correct, ma'am. There is not a rule -- there is
9 not a specific rule that says you are not allowed to download the
10 entire GAL -- the entire address list.

11 Q. Now are you talking about downloading on a NIPRNet
12 machine or downloading on a personal machine or is there any
13 difference?

14 A. There is. When you transfer military data to personal
15 machines, there are regulations, and I -- I'm sorry. I can't quote
16 them for you, but there are regulations that do not allow us to move
17 military data to personal machines. I can't just take -- download
18 the SharePoint site's a good example because it has a bunch of
19 unclassified data, so it might have alert rosters and PowerPoints --
20 slides and briefings and such. It might have a briefing from the
21 NSA, and I download all this data on my personal machine -- I mean to
22 a government machine. When I move it off of that government machine
23 to my personal machine, the question comes up: Why are you doing

1 that? And so there are rules that prevent us from moving data from a
2 government machine, and that's why you can't use thumb drives
3 anymore; you can't burn CDs on unclassified machines.

4 Q. Do you know what those rules are and where they come
5 from?

6 A. I do not. AR 25-2, somewhere, governs that, but there's
7 also local policies that would be implemented that would prevent
8 that. I can research that, if needed.

9 Q. No, no; that's okay.

10 A. Okay. Yes, ma'am.

11 MJ: Any follow-up based on mine?

12 TC[MAJ FEIN]: No, ma'am.

13 ADC[CPT TOOMAN]: No, ma'am.

14 MJ: All right.

15 **[Pause]**

16 MJ: Temporary or permanent excusal?

17 TC[MAJ FEIN]: Temporary, ma'am.

18 ADC[CPT TOOMAN]: No objection.

19 MJ: All right.

20 **[The witness was warned, temporarily excused, and withdrew from the**
21 **courtroom.]**

22 MJ: Just for the record, as part of the -- my overruling the
23 defense objection, I'm not going to consider any of this witness's

1 testimony with regard to it depends on intent and all of the rest of
2 that. He said there's rules regarding the transfer of data from a
3 NIPRNet computer to a personal computer. He knows where they are but
4 he doesn't know what they are; that was my understanding of his
5 testimony.

6 TC[MAJ FEIN]: Yes, ma'am.

7 ADC[CPT TOOMAN]: Sounds right, Your Honor.

8 MJ: Okay. Anything else we need to address today?

9 TC[MAJ FEIN]: No, ma'am.

10 CDC[MR. COOMBS]: No, Your Honor.

11 MJ: Okay, now we still need to talk about tomorrow. Do you
12 want to take a brief recess and then come back on the record and
13 decide a way ahead?

14 CDC[MR. COOMBS]: Yes, Your Honor.

15 TC[MAJ FEIN]: Yes, ma'am.

16 MJ: All right. How long do you think we need?

17 CDC[MR. COOMBS]: Ten minutes, Your Honor.

18 MJ: Okay.

19 Court is in recess and plan we'll begin somewhere between
20 10 minutes of and 6 o'clock, depending on how long the -- this
21 discussion takes. Court is in recess.

22 **[The court-martial recessed at 1748, 17 June 2013.]**

23 **[The court-martial was called to order at 1809, 17 June 2013.]**

1 MJ: Court is called to order. Let the record reflect all
2 parties present when the court last recessed are again present in
3 court.

4 All right, counsel and I met in an R.C.M. 802 conference
5 to talk about the way ahead. First of all, we'll -- we will be
6 coming back on the record tomorrow morning at 0930 for oral argument
7 on the admissibility of certain prosecution exhibits that the defense
8 has had hearsay, authentication, and relevance objections to; and
9 there was some confusion as to exactly what exhibits we were talking
10 about. I know we're talking about Prosecution Exhibit 109. What are
11 the other ones?

12 TC[MAJ FEIN]: 31 and 32, ma'am.

13 MJ: All right, so 33 and 34 are not being offered by the
14 government?

15 TC[MAJ FEIN]: No, ma'am.

16 MJ: Okay.

17 [Pause] All right, Defense, I assume since you cited 33
18 and 34 as well, that your arguments remain the same for -- if those
19 two exhibits are taken out.

20 ADC[CPT TOOMAN]: Yes, ma'am.

21 MJ: Okay. And that will be at 0930 tomorrow.

22 We also discussed the way ahead after that. Right now
23 the parties are negotiating additional stipulations of expected

1 testimony. They've -- they're in draft form and they've got to go
2 back -- both sides have to agree on a stipulation of expected
3 testimony, as does PFC Manning, in order for them to be introduced as
4 evidence in lieu of witness testimony; that takes time. And the
5 parties have advised me -- Major Fein, why don't you explain for the
6 record what the parties would like to do?

7 TC[MAJ FEIN]: Yes, ma'am.

8 Your Honor, the defense and prosecution have tentatively
9 agreed to enter into 17 more stipulations of expected testimony, and
10 based on the volume of the individual stipulations, it will take both
11 parties additional time in order to discuss the stipulations, come to
12 an agreement, and then also provide certain ones to certain
13 government organizations to have classification reviews completed, so
14 the United States and defense came together and proposed that after
15 tomorrow's oral argument the court recesses until next Tuesday, which
16 would provide both parties adequate time by the end of this week to
17 have the stipulations completed and then to send those to the
18 different government organizations for them to come back based off a
19 court order by Wednesday of next week.

20 If we reconvene, Your Honor, on Tuesday of next week,
21 it'll be a status hearing on the stipulations and any other issues
22 that might arise; and the goal then being on Wednesday, the

1 government resumes its case in chief by calling the next set of
2 witnesses and reading the stipulations onto the record.

3 MJ: All right, is that the defense's understanding, as well?

4 CDC[MR. COOMBS]: Yes, Your Honor.

5 MJ: All right.

6 And the court did discuss with the parties the -- this
7 additional review by the other agencies. I mean, that's between the
8 government. You can certainly, you know, have whoever you want to
9 review it, but it's not going to delay the court, so I'm going to
10 have a court order coming out saying that it's going to be 3 business
11 days and that's it.

12 TC[MAJ FEIN]: Yes, ma'am.

13 MJ: Okay, so I'll draft that order today. We'll put that as
14 an appellate exhibit tomorrow.

15 Is there anything else we need to address at this point?

16 CDC[MR. COOMBS]: No, Your Honor.

17 TC[MAJ FEIN]: No, Your Honor.

18 MJ: All right, the only thing I'm thinking of is based on the
19 testimony of the last witness, I had asked the parties to prepare
20 briefs on value and money, and since the government's withdrawn that
21 part of his testimony, does either side see the need for those briefs
22 at this time?

23 TC[MAJ FEIN]: No, ma'am.

1 CDC[MR. COOMBS]: No, Your Honor.

2 MJ: All right, so I won't require them.

3 TC[MAJ FEIN]: Now, I'm sorry. There is one other
4 administrative issue. Over the weekend there was an e-mail between
5 the parties and the court about not calling sentencing witnesses
6 prior to 8 July and just put on the record that the United States
7 based off the defense not objecting and the court approving that the
8 United States did notify all sentencing witnesses or is in the
9 process of notifying prosecution and defense sentencing witnesses
10 that they would not be called any earlier than 8 July.

11 MJ: All right, that's fine; and that was a series of e-mails
12 that went back and forth. The defense had no objection. And, again,
13 looking at the schedule now and motions that -- certain motions that
14 may arise and the length of the potential defense case, you know, we
15 may not even be at that point yet by July 8th, so we'll have to see
16 how we address this as we go along.

17 TC[MAJ FEIN]: Yes, ma'am.

18 CDC[MR. COOMBS]: Yes, Your Honor.

19 MJ: Anything else?

20 TC[MAJ FEIN]: No, ma'am.

21 CDC[MR. COOMBS]: No, Your Honor.

22 MJ: All right, court is in recess.

23 **[The court-martial recessed at 1813, 17 June 2013.]**

1 [The court-martial was called to order at 0937, 18 June 2013.]

2 MJ: Court is called to order. Let the record reflect all
3 parties present when the Court last recessed are again present in
4 Court. All right. The Court has prepared an order, Review of
5 Stipulations of Expected Testimony, dated 18 June 2013, with a
6 suspension date of 3 duty business days.

7 1. To date the government, defense, and accused have
8 entered stipulations of expected testimony of 33 government
9 witnesses. Those stipulations have been admitted into evidence and
10 read on the record. The parties notified the Court they anticipate
11 entering into approximately 17 additional stipulations of expected
12 testimony by 21 June 2013.

13 2. The government notified the Court that government
14 organizations with equities involved have requested to review certain
15 stipulations of expected testimony before they are admitted into
16 evidence and read on the record. The government wishes to
17 accommodate this request and proposes to have those stipulations
18 signed by the parties before sending them to the government
19 organizations for review. Defense does not object.

20 ORDER:

21 1. The court approves the government's request for the
22 requested reviews so long as the reviews do not unreasonably delay
23 the trial. All reviews of stipulations of expected testimony will be

1 completed within 3 duty or business days after the party and the
2 accused enter into the stipulation.

3 2. This order is issued under the court's authority to
4 regulate the proceedings under Rule for Court-Martial 801 and to
5 compel the production of witnesses under Rule for Court-Martial 703.
6 Should any government organization request to review a stipulation
7 and fail to conduct this review within this timeframe, the government
8 will elect to offer the stipulation into evidence, call the subject
9 witness, or forego the use of the testimony in the government's case
10 in chief.

11 So ordered this 18th day of June, 2013.

12 Please add that as the next appellate exhibit in line. Is
13 there anything else we need to address before we proceed to argue the
14 motion?

15 TC[MAJ FEIN]: Your Honor, just two administrative issues.
16 First, yesterday what has been marked as Appellate Exhibit 572 the
17 government filed with the Court, witness list order and proposed PEs
18 of prosecution witnesses, dated 17 June which included the 17
19 stipulations you just referenced in your order, that's been marked as
20 Appellate Exhibit 572. Also this morning, Your Honor, as of this
21 morning's start of Court there are nine media members in the media
22 operation center, one stenographer at the media operation center,

1 four members of the media in the courtroom, four spectators in the
2 courtroom, and currently no one in the trailer but it is available.

3 MJ: All right. Thank you. At issue are the defense objections
4 to Prosecution Exhibits 31, 32, and 109, Prosecution Exhibits for
5 Identification. And I believe the objections were authentication,
6 hearsay and relevance. Is that correct?

7 CDC[MR. COOMBS]: That's correct, ma'am.

8 MJ: For all three of the exhibits, the same objection?

9 CDC[MR. COOMBS]: Yes, ma'am.

10 MJ: All right. I've already admitted Prosecution Exhibit 110
11 for Identification. Government, as you have the burden of proof,
12 would you like to proceed?

13 ATC[CPT von ELTEN]: Yes, ma'am.

14 MJ: Let's go exhibit by exhibit if we will. Before you start,
15 can I ask, I'll ask the defense this as well, for Prosecution
16 Exhibits 31 and 32 for Identification will the arguments be the same?

17 ATC[CPT von ELTEN]: Similar, ma'am.

18 MJ: But different?

19 ATC[CPT von ELTEN]: But different.

20 MJ: All right. Go ahead.

21 ATC[CPT von ELTEN]: Your Honor, the United States believes it's
22 made a prima facie showing of authentication and therefore all

1 defense arguments should go to weight and not admissibility. I'll
2 start off with the Internet archive result, ma'am.

3 MJ: I would prefer if you would do Prosecution Exhibits 31 and
4 32 first.

5 ATC[CPT von ELTEN]: Yes, ma'am.

6 MJ: Can you do that?

7 MJ: Thank you.

8 ATC[CPT von ELTEN]: Prosecution Exhibit 31 for Identification,
9 ma'am, is a Tweet. The United States offers it as a Tweet from
10 WikiLeaks requesting .mil email addresses. To lay out the history of
11 how Agent Mander collected it, Agent Mander testified that he
12 collected that information and witnessed in two different ways.

13 First, Agent Mander testified that he went to WikiLeaks
14 personally a year ago -- WikiLeaks Twitter account at Twitter.com,
15 and actually saw -- saw the Tweet located directly on the Twitter
16 website. Then Agent Mander testified that he more recently went to a
17 Google cache version and searched for it and located it. He
18 testified that he compared it to and found the contents to be the
19 same. Agent Mander testified that he is familiar with Google cache
20 as something that saves the result and makes it accessible for
21 viewing. Agent Mander also testified that he uses Google cache in
22 his official capacity as a CID agent and uses it regularly.

1 Therefore, Agent Mander authenticated the Prosecution Exhibit 31 for
2 Identification based on his own personal knowledge.

3 Furthermore, Agent Mander testified about the identifying
4 characteristics of the email Tweet. He talked about the logo, the
5 location where he found it on Twitter.com, the account name being
6 WikiLeaks, and the content of the Tweets all being relevant, things
7 that would make it a WikiLeaks lead. Furthermore, the Twitter
8 account under WikiLeaks is deemed as 1.8 million followers making it
9 more likely that it is -- making it WikiLeaks account making it a
10 worldly WikiLeaks account. Because the Tweet is authenticated under
11 Agent Mander's testimony, any evidence of the defense wishes to offer
12 should go to weight, not admissibility. As far as hearsay, Your
13 Honor, the United States offers PE 31 for Identification for effect
14 on listener. Specifically we're offering it to explain PFC Manning's
15 course of action. On 7 May 2010, WikiLeaks published a Tweet asking
16 for .mil email addresses. Special Agent Williamson testified that
17 there were five files related to the .mil email addresses found on a
18 computer to which PFC Manning had access. The files were, quote,
19 "created and deleted on 13 May 2010, and in between creating and
20 deleting these files the user of the Peter Bigelow account also
21 viewed the Bradley E. Manning Gmail email inbox."

22 MJ: Who is the witness who testified to this?

23 ATC[CPT von ELTEN]: Special Agent Williamson, ma'am.

1 MJ: Okay.

2 ATC[CPT von ELTEN]: The email Tweet is relevant because it makes
3 it more likely that PFC Manning's intent was to compromise the .mil
4 email addresses and information related to them. The evidence also
5 corroborates PFC Manning's admissions that he performed significant
6 research into WikiLeaks and that he -- and that he talked about
7 compromised information with Mr. Lamo. Prosecution Exhibit 32 for
8 Identification, the authentication arguments are the same, ma'am.
9 The hearsay explanation is slightly different. The United States is
10 offering this to explain the nature of WikiLeaks possession and it's
11 appropriate in this case for non-hearsay use from *United States v.*
12 *Ellison*.

13 MJ: Stop there again. What's Prosecution Exhibit 32?

14 ATC[CPT von ELTEN]: It's the video Tweet, WikiLeaks saying they
15 have an encrypted video of bomb strikes on civilians and that they
16 need Secret ----

17 MJ: They have encrypted video.

18 ATC[CPT von ELTEN]: Of bomb strikes on civilians and they need
19 super computer time.

20 MJ: And the non-hearsay basis is?

21 ATC[CPT von ELTEN]: The non-hearsay basis is explanation of the
22 nature of the possession of WikiLeaks. WikiLeaks admits to having

1 the video and needing to decrypt it which is evidence that they don't
2 have lawful possession of it. This is relevant because ----

3 MJ: How does that not go to the truth of the matter asserted?

4 ATC[CPT von ELTEN]: Because under *United States v. Ellison*,
5 possession of stolen goods, the explanation of the nature of it is
6 relevant -- is admissible in a non-hearsay way as part of the *res*
7 *gestae*.

8 MJ: What does *res gestae* have to do with hearsay?

9 ATC[CPT von ELTEN]: Your Honor, this case the case history
10 discusses *res gestae* which talks about many cases historical
11 forerunners to modern hearsay objections, and in this case the
12 statement about the possession and the nature of it is treated as
13 almost an operative fact.

14 MJ: So this is *United States v. Elliott* you're talking about?

15 ATC[CPT von ELTEN]: Yes, ma'am. Sorry. *Elliott*.

16 MJ: The one cited in your brief.

17 ATC[CPT von ELTEN]: Yes, ma'am. 23 M.J. 1.

18 MJ: Okay.

19 ATC[CPT von ELTEN]: It's relevant because it's evidence of the
20 timing of transmission by PFC Manning. The transmission is analogous
21 to a stolen good here in the WikiLeaks case because they had
22 unauthorized possession of something. The evidence corroborates PFC
23 Manning's admissions where he explicitly says to Mr. Lamo that

1 WikiLeaks has the video. PFC Manning tells Mr. Lamo that WikiLeaks
2 has an encrypted video. PFC Manning also tells Mr. Lamo that
3 WikiLeaks is unable to decrypt the video.

4 The Tweet is also relevant to the timing of the
5 transmission. United States has charged transmission between 1
6 November and 8 January of the BE22PAX video. United States has
7 presented evidence that the video was encrypted, had the same hash
8 value as the video in the CENTCOM server, and that video existed
9 outside of the United States' possession. And this Tweet
10 corroborates that as well. This is also relevant to PFC Manning's
11 knowledge of WikiLeaks' plan to compromise classified information.
12 PFC Manning did extensive research on WikiLeaks on the SIPRNET, on
13 Intelink, he talked about it with Mr. Lamo, he talked about it with
14 Press Association, and Mr. Johnson testified that Press Association
15 has been associated with Mr. Assange.

16 MJ: You also have that it's relevant to PFC Manning's knowledge
17 of the scope of the disclosure for Article 104. Please talk about
18 that.

19 ATC[CPT von ELTEN]: Well, ma'am, if WikiLeaks has a plan to
20 compromise classified information, and PFC Manning is aware of that
21 plan, it makes his knowledge of when he gives information to
22 WikiLeaks more likely that he knows what the effect of those
23 compromises will be. Furthermore, when there's evidence of a plan it

1 is evidence that evidence can also be used as proof of subsequent
2 acts. So in this case where WikiLeaks has a plan to compromise
3 information, that is then evidence that they will compromise
4 classified information in the future going forward. And, ma'am,
5 Special Agent Mander also testified that both of the Tweets are still
6 presently on Twitter and that he -- as of the first week of June
7 2013.

8 MJ: All right.

9 ATC[CPT von ELTEN]: Regarding Prosecution Exhibit 109 for
10 Identification which is the Internet archive record, ma'am, United
11 States offers that as a self-authenticating record under 902(11).
12 United States has presented an affidavit stating that the record was
13 made at or near the time of the occurrence set forth, it was kept in
14 the regular course of business and it was made as part of a regularly
15 conducted activity.

16 MJ: So are you offering it as a business record?

17 ATC[CPT von ELTEN]: Yes, ma'am. Which goes into my next point
18 that it qualifies under business records exception hearsay for the
19 same reasons.

20 MJ: The defense brief talks about the organization having,
21 using a different standard affidavit than the one they used in this
22 case. Can you talk about that?

1 ATC[CPT von ELTEN]: Yes, ma'am. The United States gave the
2 Internet Archive a standard military justice form, gave it to them,
3 gave them time to review it and they sent it back to us. It was just
4 for the expediency to use the forms we used in normal practice. The
5 content of the form provided by the United -- or the affidavit
6 provided by the United States is substantially similar to the content
7 of the form of the sample affidavit, and it's also, the content is
8 the same for self-authentication purposes as the affidavit presented
9 by the defense as well.

10 MJ: Number 2 in the attestation certificate says, 'To the best
11 of -- That the electronic systems involved can accurately record and
12 reflect the files were captured at or near the time of the date
13 reflected in the URL assigned to each file by virtue of the
14 automatic transfer of electronic data.' And then number 3 says,
15 'Such records were captured by Internet Archive or received from
16 third-party donors.' How does this affidavit accurately reflect what
17 a third-party donor gave?

18 ATC[CPT von ELTEN]: Ma'am, there are two points. One: The
19 Internet archive integrates these results into their own and
20 therefore adopts them and under ----

21 MJ: But how does that show that they're accurate? They just
22 take whatever the third-party gives them.

1 ATC[CPT von ELTEN]: Also in *United States* or in *Novak*, which is
2 cited by the defense, the case discusses how these third-party
3 donations originate and it's done by web crawling crawlers which are
4 automated processes, and automated processes have a lower standard of
5 authenticity under *Lubich*.

6 MJ: *Lubich* addressed web crawlers?

7 ATC[CPT von ELTEN]: It addressed automated processes.

8 MJ: So they have a lower standard of authenticity?

9 ATC[CPT von ELTEN]: Ma'am, in *Lubich* an unknown analyst created
10 a report or created -- or put information on the CDs that an agent
11 then testified about the contents of those CDs, and the agent had
12 some familiarity, but he didn't have personal knowledge of the
13 automated process, and he testified that he knew it was automated
14 and that he took the data and analyzed it himself. That is analogous
15 to what's happened here where Internet Archive has adopted and
16 integrated these records from third-party sources which are created
17 by an automated and presented -- and set them forth as being accurate
18 under that process. Again, ma'am ----

19 MJ: Well *Lubich* also had a defense concession that the records
20 were what the government said they were.

21 ATC[CPT von ELTEN]: That is true, ma'am, but this would be an
22 example of weight, not admissibility, that these are not accurate
23 before the Court.

1 MJ: *Lubich* cites *Weinstein* to talk about, in general,
2 electronic documents and records that are merely stored in a computer
3 raise no computer specific authentication issues. If the computer
4 processes data rather than merely storing it, authentication issues
5 may arise. Do you consider this a process or a storage?

6 ATC[CPT von ELTEN]: Ma'am, I consider this a storage because it
7 was automatically collected and the Internet Archive certifies that
8 it stores records at or near a certain time. An Internet Archive
9 doesn't process them, it doesn't manipulate them, it doesn't change -
10 - it essentially takes a picture, puts it into storage and makes it
11 accessible for a user to search for it.

12 MJ: Well, that's where again I'm confused. Explain to me, you
13 said Internet Archive takes the picture.

14 ATC[CPT von ELTEN]: Yes, ma'am.

15 MJ: How does the third-party donation system work?

16 ATC[CPT von ELTEN]: The third-party donation system as explained
17 in *Novak* works by the web crawler automatically taking the picture,
18 and then the only entity -- or the owner of the web crawler donates
19 that picture to Internet Archive. That would simply be a gap that
20 would go to weight, not admissibility.

21 MJ: Are you aware of any case, criminal case, federal or state,
22 that has allowed admissibility of a website under Internet -- under
23 one of these affidavits as self-authenticating?

1 ATC[CPT von ELTEN]: Not as self-authenticating. However, in
2 *United States v Bansal* cited by the United States in its brief,
3 Internet Archive results were used in a criminal proceeding, and in
4 that case they were one of the bases for admission or for
5 authentication was they were compared to a previously authenticated
6 document. In this case Prosecution Exhibit 110 is substantially
7 similar in content to Prosecution Exhibit 109 and that would be
8 offered also as corroboration of the authenticity of Prosecution
9 Exhibit 109 for Identification.

10 MJ: All right. Is that in your brief?

11 ATC[CPT von ELTEN]: That detail, ma'am?

12 MJ: No. *United States v.* -- what's the case?

13 ATC[CPT von ELTEN]: *Bansal*, B-A-N-S-A-L.

14 MJ: The cite is?

15 ATC[CPT von ELTEN]: One moment, ma'am. Also in that case, ma'am

16 ----

17 MJ: Can I have the cite for it, please?

18 ADC[CPT TOOMAN]: We've got it, Your Honor. We can give it to
19 them.

20 MJ: I'd like to find it in the brief. I'm not seeing it.

21 ADC[CPT TOOMAN]: Ma'am, it's on Page 4, the last paragraph,
22 in the string cites.

1 MJ: Got it. Got it. Got it. Thank you. So it's *Bansal*.
2 Okay. So in that case they compared it with another similar exhibit?
3 ATC[CPT von ELTEN]: Yes, ma'am. In that case the evidence was
4 put forth talking about the reliability of the Internet Archive and
5 then it was compared to another exhibit for authentication purposes.
6 MJ: All right. Any others?
7 ATC[CPT von ELTEN]: No, ma'am.
8 MJ: What about *Telewizja*?
9 ATC[CPT von ELTEN]: *Telewizja* relied on an affidavit, ma'am.
10 MJ: So that's not a self-authenticating case?
11 ATC[CPT von ELTEN]: No, ma'am, I'd have to get back with you on
12 that.
13 MJ: Okay. I'm sorry. Proceed.
14 ATC[CPT von ELTEN]: Yes, ma'am. The Internet Archive result is
15 relevant because it explains why PFC Manning chose to compromise the
16 information he did. PFC Manning conducted searches on Intelink
17 related to content set forth in Prosecution Exhibit 109 for
18 Identification. PFC Manning admitted to compromising information to
19 Mr. Lamo as set forth there in Prosecution Exhibit 109 for
20 Identification. Mark Johnson testified PFC Manning discussed mining
21 the open source center. Mr. Allen also testified that PFC Manning
22 conducted research on the open source center related to Iceland and

1 WikiLeaks. And that is a non-hearsay purpose of explaining why PFC
2 Manning took the course of action that he did.

3 MJ: All right.

4 ATC[CPT von ELTEN]: And PFC Manning also discussed compromising
5 JTF GTMO information with the Press Association account that Mr.
6 Johnson testified has been associated with Mr. Julian Assange.

7 MJ: That was Mr. Johnson?

8 ATC[CPT von ELTEN]: Yes, ma'am. Finally, Your Honor, the United
9 States does not have evidence that PFC Manning visited these
10 websites. Excuse me, Your Honor. The United States has evidence
11 that PFC Manning visited these websites based on the facts listed.
12 PFC Manning also wiped his computer in January 2010 eliminating
13 additional evidence as Agent Mander testified.

14 MJ: Yes?

15 ADC[CPT TOOMAN]: We'll object to that. That's pure
16 speculation on the part of the government that the wiping of the
17 computer eliminated any evidence.

18 MJ: Okay. What computer? There have been a number of
19 computers that we are discussing.

20 ATC[CPT von ELTEN]: Personal -- Mr. Johnson testified that PFC
21 Manning wiped his personal Macintosh computer.

22 MJ: Okay. The Court will disregard any reasons why. Go ahead.
23 But it's the government's theory of the case that that's why, right?

1 ATC[CPT von ELTEN]: Yes, ma'am. And additionally Agent Shaver
2 testified that PFC Manning used an unauthorized web browser which
3 would make him able to delete his history.

4 MJ: On his personal computer?

5 ATC[CPT von ELTEN]: On his government computer, ma'am.

6 MJ: That was Mr. Shaver?

7 ATC[CPT von ELTEN]: Yes, ma'am.

8 MJ: All right.

9 ATC[CPT von ELTEN]: Thank you, ma'am.

10 MJ: Defense. Can you go in the same order, please?

11 ADC[CPT TOOMAN]: Yes, ma'am. Your Honor, we'll begin by noting
12 the government in their brief calls this a lax standard. We do not
13 believe this is a lax standard. The government bears the burden of
14 authenticating this information before it's admissible.

15 MJ: Well, *Lubich* said the standard is not high, is that right?

16 ADC[CPT TOOMAN]: It may have, Your Honor. That's not a
17 binding case on this Court though.

18 MJ: It isn't?

19 ADC[CPT TOOMAN]: I stand corrected. That is a military case.
20 I apologize. Your Honor, we think the more appropriate standard is
21 the standard set forth in *Novak*.

22 MJ: So the *Novak* standard is more important than the *Lubich*
23 standard?

1 ADC[CPT TOOMAN]: We think that it's the correct standard,
2 Your Honor. And there are distinctions with the *Lubich* case that
3 I'll be happy to discuss. There we were talking about forensic
4 images of computers.

5 MJ: Okay.

6 ADC[CPT TOOMAN]: That's not what we're talking about here.
7 We've talked about forensic images. The forensic images in this case
8 have been admitted. The reports based on those forensic images have
9 been admitted. That's not what the government's attempting to
10 introduce here.

11 MJ: Now, *Novak*, does that address Tweets?

12 ADC[CPT TOOMAN]: It does not address Tweets, Your Honor.

13 MJ: So is that case relevant more to your 109 argument or the
14 31 and 32 as well?

15 ADC[CPT TOOMAN]: Well, it's relevant to 31 and 32 as well,
16 Your Honor, because those exhibits are actually Google cache images.
17 So those exhibits aren't pulled directly from Twitter.

18 MJ: I thought the witness said that he had pulled it and
19 compared the current version with the Google cache version.

20 ADC[CPT TOOMAN]: The witness said that he -- one way that you
21 could pull a Tweet is to go back and look at it because they're all
22 there. He also said he didn't do that. So he -- when he was
23 explaining how you could acquire this Tweet, he said there are two

1 ways, you could do a search using Google cache or just Google search
2 it directly, the content of it, and that would pull it up, or you can
3 go to Twitter. And he said what he did was the first way, which the
4 first way being you just search for it directly and pull it up on
5 Google cache. And, Your Honor, Mr. Mander said the same thing with
6 respect to the WikiLeaks most wanted list, 109. He said he searched
7 for WikiLeaks most wanted list and pulled it up that way. He
8 couldn't get to it when he actually went to WikiLeaks was his
9 testimony.

10 MJ: Okay. Let's stick right now with Prosecution Exhibits 31
11 and 32.

12 ADC[CPT TOOMAN]: Yes, ma'am.

13 MJ: I believe I heard the government argue that the witness
14 said that he did, he pulled it up through Google today and compared
15 what he got through Google today with what he got from Google cache
16 and that's not the defense's view?

17 ADC[CPT TOOMAN]: Well, looking at the transcript, he at one
18 point said that he didn't do that. Now, he may have also said, and I
19 may have missed it when I was reviewing it, that that's entirely
20 possible. But he definitely said there were two ways. I didn't do
21 the go back and go through all the Tweets essentially because I
22 didn't want to go through thousands of Tweets.

23 MJ: Okay.

1 ADC[CPT TOOMAN]: So our opinion is that Google cache is
2 analogous to the Internet Archive. It has some way that it grabs
3 this information and there's no, there's been no discussion of that
4 before the Court. The Court has no information on how Google cache
5 does that. And so from our perspective the authentication piece
6 hasn't been met with respect to Google cache. There should be --
7 there should be some authentication from someone from Google who
8 would explain, hey, this is what we do.

9 MJ: What's the defense's position with the government? The
10 government has two different authentication approaches to Prosecution
11 Exhibit 31 and 32 versus 109. Versus 109 they're arguing self-
12 authenticating with the affidavit. Prosecution Exhibits 31 and 32
13 they're arguing fall under M.R.E. 902 by distinctive characteristics.
14 What's the defense's position with respect to that?

15 ADC[CPT TOOMAN]: Our position is that it would not be
16 authenticated based on distinctive characteristics.

17 MJ: And does Novak deal with distinctive characteristics?

18 ADC[CPT TOOMAN]: I don't believe it does, Your Honor.

19 MJ: Okay. Why would it not be admissible under distinctive
20 characteristics?

21 ADC[CPT TOOMAN]: Well, the distinction, Your Honor, is a
22 number of the factors that they talk about with respect to self-
23 authenticating based on characteristics, that Tweet talks about .mil

1 addresses. Specifically it says we want as many .mil addresses. It
2 doesn't say we want the GAL. We don't -- It doesn't say we want the
3 Iraq database.

4 MJ: I think what the government has argued is the Tweets have
5 come from the WikiLeaks URL address. What else did they argue here?

6 ADC[CPT TOOMAN]: Well, the Tweets come from Google cache,
7 Your Honor. We would also point to the case -- I'm sorry, Your
8 Honor.

9 MJ: Go ahead.

10 ADC[CPT TOOMAN]: We would also point to the case cited in our
11 brief, *In Re: Home Store*, which says printouts of Internet web pages
12 are not self-authenticating.

13 MJ: Well, so the government -- as I understood the government
14 they're relying on distinctive characteristics under M.R.E. 902 which
15 wouldn't be a self-authenticating or an M.R.E. 901. Am I getting my
16 rules mixed up here.

17 ATC[CPT von ELTEN]: Distinctive characteristics, ma'am, is
18 901(b)(4).

19 MJ: 901(b)(4). Okay. So the government's not arguing that
20 Prosecution Exhibits 31 and 32 are self-authenticating. They haven't
21 produced any affidavits stating any of that. Are you saying that
22 they have to or can they authenticate a different way?

1 ADC[CPT TOOMAN]: Well, I would say -- Well, certainly
2 producing an affidavit would be one way. We would say that they
3 couldn't, the distinctive characteristics here, just because it looks
4 like it, anyone can create a web page, not anyone, but people
5 certainly can create a web page that certainly looks like WikiLeaks
6 or looks just like Twitter, and we provided in our -- in our motion
7 to the Court a number of instances where Twitter has been hacked. So
8 we would say that based on that, the integrity of Twitter would
9 suggest that don't just take it for face value, which is what the
10 government's asking you to do. Hey, it was on Twitter, it must be
11 true, authenticated. Well, Twitter can be hacked, it's easy to
12 duplicate, so we would suggest that 901(b)(4) wouldn't be appropriate
13 for authentication with respect to the Tweets.

14 MJ: What's your position with the cases cited by the government
15 that stand for the proposition that the possibility of alteration
16 goes to weight, not admissibility?

17 ADC[CPT TOOMAN]: Could I have a moment, Your Honor?

18 MJ: Yes.

19 **[There was a brief pause while the assistant defense counsel**
20 **researched information.]**

21 ADC[CPT TOOMAN]: Your Honor, I guess we would rely on sort of
22 the general rule of authentication that you have to be convinced that
23 it is what they purport it to be.

1 MJ: Okay. Well, would you agree that the standard would be not
2 that I find it's what the government purports it to be, but a
3 reasonable fact-finder, or me in that role finds it be what the
4 government purports it to be.

5 ADC[CPT TOOMAN]: Yeah, well, yes. I guess in this case, you
6 are the reasonable fact-finder here.

7 MJ: Okay.

8 ADC[CPT TOOMAN]: If you're convinced, then ----

9 MJ: I'm not there yet. Okay.

10 ADC[CPT TOOMAN]: All right. Would you like me to continue,
11 Your Honor?

12 MJ: Yes.

13 ADC[CPT TOOMAN]: Okay. I think we've covered authentication
14 of the Tweets. So we would move on to authentication of Prosecution
15 Exhibit 109 for Identification. There we believe the Novak case
16 stands for the proposition that the government needs to have an
17 affidavit not necessarily from the Internet Archive, but from someone
18 who actually has knowledge of WikiLeaks. And all of this sort of
19 ties into hearsay, there's a lot of overlap, but with respect to
20 something from the Internet Archive and particularly the most wanted
21 list, this is quadruple hearsay.

22 MJ: Well, let's talk about authentication before we get to
23 hearsay.

1 ADC[CPT TOOMAN]: Okay. We would suggest that Novak stands
2 for the proposition that someone from WikiLeaks needs to testify
3 about what was on their page at a certain time. When you look at the
4 affidavit from Mr. Butler, he doesn't make any assertion that he has
5 personal knowledge of what was taken. He says all I know is what the
6 third-party gave to us. And Your Honor asked a question of the
7 government about process versus storage. This is definitely a
8 process. There is a process that takes place to get this data by the
9 third-party.

10 MJ: Describe that process to me. What is this crawling?

11 ADC[CPT TOOMAN]: We don't know. Only the third-party knows.
12 I imagine that it sounds from the frequently asked questions and Mr.
13 Butler's affidavits and the Novak case that third parties are getting
14 these websites somehow.

15 MJ: So are crawlers going from Internet.org to these third
16 parties or do these third parties have crawlers and they're crawling
17 and then they're getting things to Internet.org?

18 ADC[CPT TOOMAN]: That's our understanding. So I might be
19 interested in contributing to the InternetArchive.org mission. I
20 think they are doing a great thing and so I set up whatever process
21 I'm going to run to gather data and then I contribute it to Internet
22 Archive. So there's no authentication of the process this third-
23 party is running. A third-party could do anything with that

1 information. They can gather that information, they can tweak it if
2 they wanted to and then send it to the Internet Archive. The
3 Internet Archive has no idea how that data was gathered or if it was
4 manipulated at all. All they can say is Joe gave me a batch of data
5 and we added it to our archive and this is what our archive says. We
6 haven't changed what Joe or Bob or Phil or whoever gave to us, but
7 who knows what that individual did with it. And who knows the
8 process. And we would -- we would say that there is a process, that
9 individual is running a process in order to get the information.

10 MJ: How would you address the government's contention that the
11 reliability is enhanced because you can compare Prosecution Exhibit
12 109 for Identification with Prosecution Exhibit 110 which was if you
13 go on the Internet today and that comes up?

14 ADC[CPT TOOMAN]: Sure, I guess if you can compare them, you
15 can compare them. I don't know that we would -- could really respond
16 to that. I mean if they look the same I guess ----

17 MJ: Do you think it enhances the reliability, has any impact on
18 reliability?

19 ADC[CPT TOOMAN]: I don't think it would -- Well, it may
20 enhance the reliability, but I don't think it enhances the
21 authentication. I still think there's an authentication issue.
22 Because, again, we're talking about things that were pulled today,
23 not things that were pulled back in November of 2009, as they purport

1 them to be. The thing that is being compared is a present day
2 version. We've gone and we have this present day version and we're
3 comparing it to what Internet Archives says or whatever the process
4 is, but in this situation we're dealing with present day versions.
5 No one is looking at WikiLeaks in 2009 and telling this Court what it
6 saw in 2009.

7 MJ: Well, if you pull something up today and it says draft most
8 wanted leaks of 2009 sort, and then you compare it to something that
9 is coming out of this archive.org that is also entitled draft most
10 wanted leaks of 2009 sort, wouldn't that enhance the probability that
11 it is what it purports to be?

12 ADC[CPT TOOMAN]: It would, Your Honor.

13 MJ: Okay.

14 ADC[CPT TOOMAN]: Your Honor, while we're addressing
15 authentication, the government spoke about the process through which
16 they acquired their affidavit and, if I could, I'd like to publish
17 one of the attachments we provided to the Court yesterday.

18 MJ: Certainly.

19 ADC[CPT TOOMAN]: Your Honor, this is one of the attestation
20 certificates that the government provided to the Court. I believe
21 it's from Appellate Exhibit 160. It's pre-admitted evidence. And
22 this wasn't an attachment to our motion, but I think the Court got a
23 copy yesterday.

1 MJ: Yes.

2 TC[MAJ FEIN]: Your Honor, may I have a moment?

3 MJ: Yes.

4 TC[MAJ FEIN]: Thank you, ma'am.

5 [There was a brief pause while the trial counsel consulted with the
6 assistant defense counsel.]

7 MJ: This is part of the government's brief, is that correct?
8 Is this Prosecution Exhibit 160 or is this part of the government's
9 brief?

10 ADC[CPT TOOMAN]: No, ma'am. It's Appellate Exhibit 160. So
11 this is one of the attestation certificates the government provided
12 during a 39(a) we had last summer when they were pre-admitting
13 documents and I believe this one had to do with IA training that PFC
14 Manning took.

15 MJ: Okay. Part of the defense brief. I knew I saw it. Got
16 it.

17 ADC[CPT TOOMAN]: Yes, ma'am. So we would point to the
18 attestation certificate which would be part of the government brief
19 from Mr. Butler where the government set forth that this was what
20 they did for expediency was they sent Mr. Butler their form. Well,
21 expediency would be for Mr. Butler to use the form that he's used to.
22 And defense would also suggest this isn't the normal form that the
23 government uses. And we would just ask the Court to compare what Mr.

1 Butler signs and what has previously been used which we would say is
2 what the government normally uses. What the government normally
3 uses, we have five paragraphs, and what Mr. Butler signed only has
4 four. Some of the language has been changed. For example, in
5 Paragraph 1 of Mr. Butler's attestation there is no indication that
6 he's a custodian of these records as there is in this. There is no
7 attestation that he has personal knowledge in his certificate as
8 would be required to authenticate. He doesn't say that it was made
9 in the regular practice of his duties. And he doesn't say it's a
10 complete record as is said here. We'll direct the Court to Number 5,
11 it says the records are a true, accurate and complete copy. That's
12 not what Mr. Butler says. Mr. Butler says the records are true and
13 accurate copies of the original documents in the Internet Archive
14 Wayback machine servers. Are they complete? We don't know. And
15 we'll get into the completeness a little bit down the road when we
16 talk about, when I talk about hearsay. And I guess just to address
17 Your Honor's earlier question about comparing the documents, we would
18 say that the issue isn't whether or not you can compare, the issue is
19 what does it look like in 2009. And nothing that the Court has
20 before it tells us what any website looked like in 2009 or 2010.
21 Move on to hearsay, Your Honor?

22 MJ: Okay.

1 ADC[CPT TOOMAN]: With respect to the Tweets, there's an issue
2 of, we would say, double hearsay. You have a Tweet from WikiLeaks,
3 and then you have Google cache saying what WikiLeaks said in their
4 Tweet. So there's two levels of hearsay. And before we even get ---
5 -

6 MJ: Well, let me ask about that. On the Google cache they're
7 pulling up just something on a website. What's the authority that
8 you're relying on to say that that's hearsay, as opposed to just
9 whatever is appearing on the website?

10 ADC[CPT TOOMAN]: Sure. We would say that when Google cache
11 takes it and puts it up, they are saying what WikiLeaks said and here
12 it is. This is what they said at this time purportedly, so now
13 they're making a statement as to what WikiLeaks said. But really
14 before we even get there, Your Honor, we would say that these aren't
15 even statements. These are made by a corporation or an organization.
16 And so a declarant has to be a person. So this goes to ----

17 MJ: Then how is it hearsay?

18 ADC[CPT TOOMAN]: Well, this goes to state of mind, the state
19 of mind, plan and motive. It doesn't fall within the exception
20 because ----

21 MJ: Well, it has to be hearsay first to get to the exception
22 piece.

23 ADC[CPT TOOMAN]: Right.

1 MJ: The government's purported that they're using it for a non-
2 hearsay purpose. What's your position on that?

3 ADC[CPT TOOMAN]: Well, I'll address the non-hearsay purposes
4 in order. First we have the state of mind, plan or motive of
5 WikiLeaks was I think the first hearsay exception the government
6 addressed. The plan or state of mind of WikiLeaks has nothing to do
7 with PFC Manning. Nothing to do with him. They can plan and do
8 whatever they want. That doesn't affect PFC Manning.

9 MJ: If the government is offering this most wanted list, is it,
10 and maybe, as I understand what they're saying is, well, here you're
11 on the Tweets. Never mind. We're not talking about that yet. But
12 the Tweets are, as I understood what the government was saying, was
13 that they were offering it for the fact that this is what WikiLeaks
14 put out there. Whether they were actually planning on doing it or
15 not is irrelevant. A reader could come and say, okay, this is what
16 they're putting out there that they plan to do, so that's the
17 relevance not whether they actually plan to do it or not.

18 ADC[CPT TOOMAN]: We understood I guess two hearsay exceptions
19 the government was relying on. One was the plan, state of mind,
20 intent of WikiLeaks, and one was the effect on the listener.

21 MJ: Okay.

22 ADC[CPT TOOMAN]: And ----

23 MJ: So, start off with the plan of WikiLeaks then.

1 ADC[CPT TOOMAN]: Okay. And I guess another, all of these are
2 so intertwined I'm going to go back for a minute to authentication
3 and it's an idea that is going to be relevant throughout this
4 discussion, but the *Hopcheque* or *Hopchecue* case the government cited
5 in their brief -- I'll give you a pinpoint cite of page 1121 with
6 respect to authentication, that case says there has to be a
7 connection between the accused or the defendant and the thing which
8 you're trying to authenticate. And so, and we'll get into the
9 connection with PFC Manning and these things when we talk about
10 hearsay as well, but we'd ask you to just consider that with respect
11 to authentication as well. So first the plan, state of mind, the
12 plan, motive, state of mind of WikiLeaks.

13 MJ: So as I understand the defense, you're understanding of
14 what the government is doing is they're offering it for hearsay and
15 now it's a hearsay exception for state of mind?

16 ADC[CPT TOOMAN]: Yes.

17 MJ: Okay.

18 ADC[CPT TOOMAN]: That's our understanding. The state of mind
19 of WikiLeaks has nothing to do with PFC Manning. PFC Manning is not
20 charged with conspiracy. So what WikiLeaks intends to do, it doesn't
21 matter. It has no impact on PFC Manning. And sort of the
22 overarching theme of all of this is, you know, did he actually see
23 any of this? Did he ever actually see it? So whether we're talking

1 about effect on the listener or authentication, there has to be a
2 connection between PFC Manning and these documents, and there's not a
3 connection between PFC Manning and these documents.

4 MJ: Well, isn't that a question of fact? Right now we're
5 talking about admissibility of things. As I understand the
6 government's theory, is this provides circumstantial evidence, it was
7 there in 2009, those were the times that PFC Manning was doing the
8 searches so that's circumstantial evidence that he might have seen
9 it.

10 ADC[CPT TOOMAN]: Sure. But I -- the defense's position is if
11 you're going to talk about the effect on the listener, there's got to
12 be a listener, someone has to have heard it, and the person that has
13 to have heard it is PFC Manning.

14 MJ: I understand. And the defense's position is he didn't hear
15 it. I got that. Isn't that going to ultimately be a question of
16 fact at the end of the day?

17 ADC[CPT TOOMAN]: Well, it is, but the defense believes that
18 you have to resolve that piece when determining the admissibility
19 because in order to rule on the hearsay exception of effect on the
20 listener, Your Honor would have to determine that there was a
21 listener and that there was enough evidence that he actually heard
22 it. Otherwise it shouldn't be admitted as not a hearsay exception,
23 but as non-hearsay.

1 MJ: So it's the defense's position that it shouldn't be
2 admitted for the impact on the listener as a stepping stone that this
3 is the government theory of the case, opportunity to look, could have
4 seen the statement, therefore the impact was that's why he acted like
5 he acted, that that foundation, because it's a foundational piece and
6 doesn't absolutely establish the connection that it shouldn't be
7 admitted.

8 ADC[CPT TOOMAN]: Right. The defense position is if you're
9 going to admit something for the non-hearsay purpose of effect on the
10 listener, you need to prove that he heard it. You have to convince
11 the reasonable fact-finder, Your Honor, that PFC Manning heard it.
12 And there's ----

13 MJ: Well, again, that's the fact finding piece later on. Right
14 now I'm just doing as a question of law the admissibility of the
15 document at issue.

16 ADC[CPT TOOMAN]: Right.

17 MJ: So you're saying I need to make that finding in this step,
18 this level now, too?

19 ADC[CPT TOOMAN]: Right. Our position would be Your Honor
20 needs to determine whether or not PFC Manning heard it. And then if
21 you determine that it's reasonable that he heard it, then it would be
22 -- then you could admit it and then make a determination based on the
23 facts what weight to give it. And so the government's pointed to

1 circumstantial evidence that PFC Manning may have seen them, and our
2 position is the circumstantial evidence that he didn't see it far
3 outweighs any circumstantial evidence that he did. And I'll address
4 those Tweets in turn.

5 MJ: Okay.

6 ADC[CPT TOOMAN]: And the list. So Prosecution Exhibit 31 is
7 the email list. The email list, well first of all, there's mountains
8 of forensic evidence in this case, particularly, you know, the
9 government likes to point to the fact that PFC Manning's machine was
10 wiped in late January. With respect to the May Tweet, that evidence
11 would be there. And with respect to the .22 machine, his primary
12 SIPR machine, it would be there as well. And so the forensic
13 experts, Mr. Shaver and Mr. Johnson, who have testified about the
14 primary SIPR and the personal Mac, they looked for anything related
15 to WikiLeaks. Anything. And they didn't find Tweets on PFC
16 Manning's computer. They found all sorts of other things to do with
17 WikiLeaks. They found things to do with WikiLeaks in April. So it's
18 not an issue of him having cleared his Internet history. So if he
19 had seen the Tweet in May, there would be evidence of it on one of
20 his computers, and there's not. And our opinion is that outweighs
21 the fact that they had had a Tweet about email addresses and then he
22 downloaded email addresses. We think that the fact, and I guess also
23 relevant to this discussion is the supply room computer where we had

1 the stipulation of Mr. Williamson and Mr. Williamson didn't find any
2 references to Twitter on the -- on Twitter on the supply room
3 computer where there would have been. There was all sorts of other
4 things tying that computer to PFC Manning, his Gmail account,
5 purchases on Amazon, other activity that was clearly done by PFC
6 Manning, but there was no -- there was no Twitter or WikiLeaks on the
7 supply room computer. And so those are the computers which PFC
8 Manning would have used to access Twitter and there's nothing on
9 there. And so our position is that that outweighs the circumstantial
10 evidence provided by the government and PFC Manning didn't see that
11 Tweet.

12 With respect to the next Tweet, the video Tweet, again, no
13 Internet history, no evidence of him having viewed it in January and
14 the government points to references in chats later in the spring. At
15 no point does PFC Manning say he gave WikiLeaks the encrypted video.
16 He never says that. He says they have it. He had a number of chats
17 with Press Association, he could have learned it there. In his
18 providence inquiry he told the Court ----

19 MJ: That I'm not interested in.

20 ADC[CPT TOOMAN]: Okay. There are a lot of ways that PFC
21 Manning could have learned about that video. The government hasn't
22 established that he learned it from the Tweet. There's no forensic
23 evidence pointing to the Tweet. They haven't found a Twitter account

1 of PFC Manning that shows him following WikiLeaks. And all of the
2 evidence we've heard about the Farah video has pointed to a couple
3 things. First, the Brady material of this Jason Katz character who
4 has it in December of 2009 and has no connection whatsoever to PFC
5 Manning. That's where we've heard about the Farah video. Someone has
6 the same version, hash value, same version as CENTCOM.

7 MJ: I understand all of this for your closing argument. Where
8 I'm having trouble following this is we're talking with admissibility
9 of the Tweet.

10 ADC[CPT TOOMAN]: Sure. Again, Your Honor, the relevancy of
11 this is conditioned upon a fact and the admissibility of this
12 evidence is based on whether or not he heard it. So our position is
13 this is something that you need to determine right now.

14 MJ: Is it relevant that if it's there at the time that he had
15 an opportunity to hear it?

16 ADC[CPT TOOMAN]: I'm sorry.

17 MJ: Wouldn't it be relevant, because the Tweet is there at the
18 time that PFC Manning is involved in WikiLeaks, that he had an
19 opportunity to see it?

20 ADC[CPT TOOMAN]: No, we don't think so. We think that you
21 would have to show that he actually saw it. For something to affect
22 PFC Manning, he has to actually have seen it. He has to. Otherwise
23 it can't affect him.

1 MJ: I agree with you on that.

2 ADC[CPT TOOMAN]: So that's what we think the Court has to
3 determine now is did he hear it, did he see it, does the evidence
4 that we've heard and we've heard ----

5 MJ: But I guess -- All right. So you're saying that the
6 admissibility for -- so you're saying that the opportunity to see it,
7 it's the defense's position is that that's not enough.

8 ADC[CPT TOOMAN]: No. Correct, Your Honor. That's correct.

9 MJ: Now, the cases that you cite for that, I don't remember
10 offhand the exact name of the case, but the one I'm thinking of is
11 where, the murder case where the defendant was trying to say that a
12 third-party was going to -- killed the victim based on -- and wanted
13 to introduce statements from two witnesses that said that the third-
14 party made statements. Refresh my recollection on that. The third-
15 party made statements that they ----

16 ADC[CPT TOOMAN]: Well, Your Honor, the federal case, *Brandon*
17 *v Villas of Maywood*, there was a 1980 -- a 1983 claim, and you had an
18 alleged drug dealer, and then there were two women who said, hey, are
19 you working today.

20 MJ: That's the one I'm thinking of.

21 ADC[CPT TOOMAN]: Or allegedly said, hey, are you working
22 today. And so what the Court needed to determine was whether or not
23 the officers actually heard that to determine whether or not they had

1 probable cause that he was engaged in drug activity. So there the
2 Court had to figure out, did these police officers actually hear what
3 those women said? If they didn't hear it, then there could have been
4 no effect on them.

5 MJ: I'm mixing up two cases. I've got that case and then *New*
6 *Mexico v. Rosales* where you have the Court excluded witness testimony
7 that that victim said that a third-party owed him a debt. There was
8 no evidence that the third-party knew about the debt. So do either
9 of these cases address opportunity? I mean in both of these cases I
10 think it was pretty clear that the person didn't hear it.

11 ADC[CPT TOOMAN]: Right. I don't believe they do address
12 opportunity, Your Honor. I believe they address whether or not the
13 person actually heard it.

14 MJ: Are you aware of any case that does address that?

15 ADC[CPT TOOMAN]: We're not, Your Honor. And this seems to us
16 a fairly obvious proposition that for there to be a listener, you've
17 got to have heard it, so we're not aware of any case.

18 MJ: Okay.

19 ADC[CPT TOOMAN]: With respect to -- so I guess all we just
20 talked about would apply to the WikiLeaks most wanted list as well.
21 And there, Your Honor, we believe there's quadruple hearsay. You
22 have the defense exhibit of the other version of the WikiLeaks most
23 wanted list that has the introductory ----

1 MJ: Was that introduced?

2 ADC[CPT TOOMAN]: It was, yes, Your Honor.

3 MJ: That was Defense Exhibit?

4 ADC[CPT TOOMAN]: I think it was J or F. Maybe F.

5 CDC[MR. COOMBS]: It's F, Your Honor.

6 MJ: Okay. May I see that from the court reporter as well?

7 All right. I have it.

8 ADC[CPT TOOMAN]: So what this list makes clear is that

9 WikiLeaks wants journalists, activists, historians, lawyers, police

10 and human rights investigators to send them things that they are

11 interested in. If there's a piece of information that you know is

12 out there that exists and it would help you do whatever it is that

13 you do, send it to us and we'll add it to the list. So this list is

14 populated by statements from those people. And then the list itself

15 is a statement. And then the third-party, whoever provided that web

16 page to Internet Archive is making the statement that this is what I

17 saw and this is what I'm telling Internet Archive. And the Internet

18 Archive is making the statement that this is what WikiLeaks had on

19 their site on whatever day.

20 MJ: Let's go statement by statement. If you're talking about

21 the actual statement itself, the most wanted list, what these

22 countries actually wanted, I believe the government's position is

23 it's not being offered for the truth that countries really wanted

1 that stuff, it's being offered for what's being put on the Internet
2 for other people to see.

3 ADC[CPT TOOMAN]: Okay.

4 MJ: And then the impact it would have on PFC Manning as we
5 talked about earlier if he saw it.

6 ADC[CPT TOOMAN]: Right.

7 MJ: So what's the defense's position with that non-hearsay
8 purpose?

9 ADC[CPT TOOMAN]: That's probably a reasonable way to look at
10 that, we would say, for that first level of hearsay.

11 MJ: So let's go to level two.

12 ADC[CPT TOOMAN]: Level two. Here's where we think that
13 somebody from WikiLeaks that comes in and actually authenticates
14 this. WikiLeaks are the people who have the knowledge, the personal
15 knowledge of their list. So they're the ones in our view who need to
16 authenticate it. They're the only ones who can. Because there's no
17 one who -- well, certainly someone probably saw this list in November
18 of 2009, but they've not testified before this Court. And so absent
19 someone who actually saw this site in 2009, it would have to be
20 WikiLeaks to come in here and say this is what our site looked like
21 in 2009.

1 MJ: Now, you've cited *Novak* basically in support of that
2 proposition. Are you aware of any other cases other than *Novak* that
3 have gone the same way that you're discussing?

4 ADC[CPT TOOMAN]: There are a series of cases that cite *Novak*,
5 I don't know that any of them are exactly on point. But the decision
6 in *Novak* was reviewed on appeal and it was upheld, at least with
7 respect to the evidentiary rulings.

8 MJ: Now, are you aware of any cases that have gone the other
9 way, criminal cases?

10 ADC[CPT TOOMAN]: No, ma'am, and that's -- I guess ----

11 MJ: How would you distinguish the one the government is talking
12 about?

13 ADC[CPT TOOMAN]: To distinguish -- The way we would
14 distinguish the way the one the government is talking about is,
15 again, we're not talking about forensic images here.

16 MJ: That's the blame -- what's the name of ----

17 ADC[CPT TOOMAN]: *Lubich*, I believe, Your Honor. We think the
18 evidence here is fundamentally different than the evidence that
19 *Lubich* considered.

20 MJ: Not *Lubich*. The *Bansal* case. I think you gave me the cite
21 for it. The government has purported, and again, I just got this
22 stack of information, I haven't read everything yet, but *Basnal*, it
23 says they compared it with a similar exhibit.

1 ADC[CPT TOOMAN]: Right. They compared it -- In *Basnal* they
2 compared it to something that had already been authenticated. So
3 here, that's not what we have here. We don't have anything that's
4 been authenticated. So if they're able to authenticate the list and
5 then pull the list off of archive.org, I guess that would work, but I
6 don't know why they would need to do that if they already had an
7 authenticated list.

8 MJ: And what's the third level of hearsay?

9 ADC[CPT TOOMAN]: The third level of hearsay is the individual
10 who collected it off of WikiLeaks and then donated it to archive.org.
11 And we believe that that person would be required to testify because
12 they would have to authenticate it with respect to did they alter it
13 in any way, the same way they would have to -- anyone else would have
14 to attest this is the process I go through, I normally do this, this
15 is ----

16 MJ: How would you distinguish that from business records cases
17 that rely on M.R.E. 806(6) and 902(11) where an entity has
18 incorporated something from another entity in the course of its
19 business? As I understand the case law, that's been accepted so long
20 as the entity giving the affidavit says this is how I do business and
21 I routinely use records from entity B?

22 ADC[CPT TOOMAN]: Right. Well, we would say that here they
23 haven't, they haven't authenticated, they being Internet Archive, Mr.

1 Butler, hasn't authenticated anything that that third-party did.
2 They don't -- Mr. Butler, in all likelihood, doesn't know who that
3 third-party even is. My guess is the cases would flush out that it
4 would be someone you're doing business with and you have some sort of
5 relationship with, and the person who is attesting would have that
6 relationship. Here Mr. Butler doesn't say he knows these people, he
7 just knows we get this information from them. We don't know how it's
8 acquired.

9 MJ: Well, let's compare it. you're getting bank records, for
10 example, and records of someone's checks. Someone else would be
11 giving the checks to the bank and the bank is collecting the checks.
12 What's the difference?

13 ADC[CPT TOOMAN]: Well, there I think the check, that would be
14 something that speaks for itself on its face. You can see the check
15 and you can see if the check had been altered. You would just by
16 looking at it be able to tell, okay, hey, this, nothing looks fishy
17 here. With these Internet Archive -- with these websites, who knows?
18 You don't know. You can't look at a website and tell if it's been
19 altered in any way facially just by looking at it. And so, I guess
20 finally, Your Honor, I think we've ----

21 MJ: Level one, two and three. You said quadruple hearsay.
22 What's level four?

1 ADC[CPT TOOMAN]: That's Internet Archive's attestation. And
2 again, we don't think that that's adequate in this case because the
3 attestation makes clear ---
4 MJ: Level three and four are the same?
5 ADC[CPT TOOMAN]: No. Three is that third-party.
6 MJ: Okay.
7 ADC[CPT TOOMAN]: And then four is Internet Archive.
8 MJ: So are you really saying that that's a hearsay objection or
9 really that the authentication just is not good enough?
10 ADC[CPT TOOMAN]: Well, I would say -- Well, it's both.
11 MJ: How is it hearsay? Why would it be hearsay when every
12 other authentication is an authentication?
13 ADC[CPT TOOMAN]: Internet Archive holding it out and saying this
14 is what this site said at this time, that's a statement in our view.
15 MJ: Okay. Got it.
16 ADC[CPT TOOMAN]: Finally, Your Honor, we also have a
17 relevance objection to all three of these things. Really these
18 documents, they go towards the government's theory of their case, but
19 that's all they go to. They go towards the theory. They don't make a
20 fact in consequence any more likely than not.
21 MJ: Opportunity doesn't make a fact in consequence more likely?
22 ADC[CPT TOOMAN]: I'm sorry, Your Honor.

1 MJ: Opportunity wouldn't make the fact in consequence more
2 likely?

3 ADC[CPT TOOMAN]: Whether or not PFC Manning saw any of these
4 things doesn't make it any more likely than not that he had actual
5 knowledge that the enemy used WikiLeaks, doesn't make it any more
6 likely that he could have known that release of this information
7 could cause damage, it doesn't make it any more likely that this is
8 worth some amount or another amount. And so our position is that it
9 doesn't make any fact in consequence more or less likely. And what's
10 interesting about that is the version of the website that the
11 government provided, and we think just looking at the version and
12 comparing it to the defense's version makes clear that all of this
13 goes to is their theory of the case. They've given you the version
14 they want you to think PFC Manning saw. Well there's another
15 version, and that's the version the defense has given the Court that
16 would be inconsistent with their theory.

17 MJ: Just to make sure I understand the testimony, is it
18 defenses -- as I understood the testimony, and correct me if I'm
19 wrong, when you pull up, or the investigator testified when he pulls
20 up WikiLeaks today you get a multiple number of these lists.

21 ADC[CPT TOOMAN]: I believe his testimony, Your Honor, was he
22 couldn't get to the list when he went to WikiLeaks. He would have to
23 Google search WikiLeaks most wanted list 2009 and then multiple

1 versions come up. But when he actually goes to WikiLeaks, he
2 couldn't find it. And so just based on that, you see multiple
3 versions come up, the government's chosen the one that is consistent
4 with their theory; not the one that advances a fact in evidence, the
5 one that's consistent with their theory. It's no more likely because
6 they're basically an unsorted version and a sorted version. The
7 unsorted version has the introductory language that talks about
8 WikiLeaks mission and wanting to have political impact and things
9 like that. That's the one that talks about, that really talks about
10 the state of mind and the intent and the plan of WikiLeaks. That's
11 not the version the government's offered because that's not
12 consistent with their theory that WikiLeaks ----

13 MJ: I understand that.

14 ADC[CPT TOOMAN]: So it's not -- it doesn't go to a fact in
15 evidence. The government should have introduced both versions if they
16 think he had just as likely an opportunity to see the unsorted
17 version as he had the sorted version.

18 MJ: That's why we have an adversarial process, right?

19 ADC[CPT TOOMAN]: Yes, ma'am. Absolutely. To us though it's
20 clear that it doesn't go to any fact in evidence, or it doesn't go to
21 making something more or less likely, it just goes to their theory of
22 the case, and that's not the basis for admissibility. It has to make

1 a fact in consequence more or less likely. And the list and the
2 Tweets, they don't do that.

3 MJ: Thank you.

4 ADC[CPT TOOMAN]: Thanks, ma'am.

5 MJ: Government, any final reply?

6 ATC[CPT von ELTEN]: Yes, ma'am.

7 MJ: I'd also ask you to distinguish *Novak*.

8 ATC[CPT von ELTEN]: May I have a moment, Your Honor?

9 **[There was a brief pause while the assistant defense counsel**
10 **consulted with co-counsel.]**

11 MJ: Yes.

12 ATC[CPT von ELTEN]: Would you like me to start by distinguishing
13 *Novak*?

14 MJ: Yes, please.

15 ATC[CPT von ELTEN]: First of all, ma'am, *Novak* admits the
16 reliability of Internet Archive results for the availability of
17 information to the public in prior art cases.

18 MJ: In?

19 ATC[CPT von ELTEN]: Prior art cases. So what is known about the
20 originality of a patent claim. *Novak* sits apart from other cases in
21 its skeptical treatment of electronic evidence and the Internet
22 Archive in particular. The United States has provided other cases
23 where the Internet Archive has been relied on in adversarial

1 proceedings based on affidavits provided. The defense has cited
2 where affidavits have been sufficient to justify the reliability of
3 the Internet Archive.

4 MJ: I think I asked you earlier if any criminal cases that you
5 were aware of that allowed Internet Archive and you gave me one. Are
6 there others?

7 ATC[CPT von ELTEN]: Yes, ma'am. That's the only one I'm aware
8 of, ma'am. Ma'am, Google cache or any automatically generated result
9 is a machine generated process and it's not hearsay any more than a
10 photograph. The defense has submitted evidence in its brief
11 attesting to the reliability of the Internet ----

12 MJ: Let me go back. You talked about Google cache is
13 automatically generated and the result is not hearsay. I believe the
14 defense's position to me was it is a statement by Google cache
15 basically saying that what I am pulling up is, in fact, what was
16 there in 2009.

17 ATC[CPT von ELTEN]: Ma'am, it's a kin to server logs. Google
18 cache just says this is a recent version as Google has found, so it's
19 a kin to server logs. They just automatically generate the results
20 based on the automated process.

21 MJ: Okay.

22 ATC[CPT von ELTEN]: But as for the evidence the defense has
23 provided to the authenticity, Enclosure 1, I believe.

1 MJ: Of the defense brief?

2 ATC[CPT von ELTEN]: May I quote it, ma'am? I will address
3 Google cache and the Wayback machine separately, although most of the
4 information applies to both. Both the Google cache and the Wayback
5 machine contain information at only one point in time. The Google
6 cache let's you know the page that you are viewing is only a snapshot
7 of how a page is when it looked at a specific time. Ma'am, that is
8 exactly what the United States is offering this for. Further, the
9 enclosure states, 'the Wayback machine keeps multiple copies of the
10 same capture on different days.' Again, ma'am, that is what the
11 United States is offering this for, is that it was captured on this
12 date. And finally, I quote, 'For any of the cache services you are
13 essentially looking through a window at a picture of what occurred,'
14 end quote. The defense has raised concerns.

15 MJ: Let me ask another question on that and I'll ask the
16 defense this too. You talked about -- The defense has -- This
17 enclosure talks about webs being sort of streaming. You know, if
18 you're watching CNN it changes every minute, they got a new story
19 now, and then you pull it up a minute later and that story
20 disappeared and they have a new one at the top. Is that the same
21 thing we're talking about when we're talking about these lists? Are
22 they fixed documents or are they things constantly changing in the
23 stream?

1 ATC[CPT von ELTEN]: Yes, ma'am, a document as it exists on a web
2 page can be changed. However, in this case, Prosecution Exhibit 109
3 for Identification is a snapshot of what the document looked like in
4 November of 2009. Prosecution Exhibit 110 is a snapshot of the
5 document as it exists today. As defense has pointed out, the
6 introductory language has been changed, but much of the content is
7 substantially the same.

8 MJ: What's your position with respect to Defense Exhibit
9 Foxtrot? This also exists today. If I compare it to Prosecution
10 Exhibit 109, it's not the same.

11 ATC[CPT von ELTEN]: No, ma'am, it's not exactly the same, but
12 there are substantial overlap. And that overlap authenticates that
13 this is how it existed back then. The United States has provided
14 independent evidence through the Internet Archive that that is how it
15 existed back then, and changes have been made in the interim, but the
16 fact that a few changes have been made also authenticates the
17 document.

18 MJ: All right.

19 ATC[CPT von ELTEN]: Defense raised the content of the affidavit.
20 Ma'am, I'd just like to point out the elements on that attested
21 personal knowledge, that the information was captured at or near the
22 time, was part of regularly conducted activity, and that they were
23 true and accurate copies, which makes it a business record.

1 Furthermore, Your Honor, there is case law to support where a
2 business integrates documents that those qualify as records of the
3 organization actually holding them, *United States v. Dababneh*.
4 MJ: Is that in your brief?
5 ATC[CPT von ELTEN]: No, ma'am, it's not.
6 MJ: Okay. What's the cite for *Dababneh*?
7 ATC[CPT von ELTEN]: *United States v. Dababneh* is 28 M.J. 929.
8 *United States* also points to ----
9 MJ: Is that a C.A.A.F. case?
10 ATC[CPT von ELTEN]: No, ma'am, that is a United States Marine
11 Corps Court of Military Review.
12 MJ: What year?
13 ATC[CPT von ELTEN]: 1989.
14 MJ: Okay.
15 ATC[CPT von ELTEN]: And also a Fifth Circuit case, *United States*
16 *v. Orich*, which is a 1978 case. I have a copy for the Court and the
17 defense, ma'am.
18 MJ: Thank you.
19 ATC[CPT von ELTEN]: May I approach?
20 MJ: Yes.
21 ATC[CPT von ELTEN]: Furthermore, ma'am, there's no evidence of
22 tampering or intent to tamper. And Prosecution Exhibit 109 is a
23 different list from Prosecution Exhibit -- or for -- 109 for

1 Identification is a different list from Prosecution Exhibit 110. And
2 the defense has offered no evidence that Prosecution Exhibit 109 for
3 Identification has changed. The arguments that they make should go
4 to weight. And to clarify one additional fact, ma'am, Agent Shaver
5 testified PFC Manning used Mozilla Firefox on his SIPRNET computer
6 which was configured to delete browsing history. He has not
7 testified regarding the NIPR computer to which PFC Manning had
8 access.

9 MJ: Wait a minute. Say that one more time.

10 ATC[CPT von ELTEN]: PFC Manning -- I'm sorry. Agent Shaver
11 testified that PFC Manning used Mozilla Firefox on his SIPRNET
12 computer. Agent Shaver testified that the Firefox browser was
13 configured to delete browsing history.

14 MJ: And this is, had Mozilla on which computer?

15 ATC[CPT von ELTEN]: On his SIPRNET computer. Agent Shaver has
16 not testified concerning the NIPR computer to which PFC Manning had
17 access to in the SCIF where he worked -- where PFC Manning worked.

18 MJ: And that is relevant why?

19 ATC[CPT von ELTEN]: I just wanted to clarify what I told you
20 earlier, Your Honor.

21 ADC[CPT MORROW]: If I could, Your Honor, he just misspoke
22 earlier, so we're clarifying ----

23 MJ: Okay.

1 ADC[CPT MORROW]: ----The fact that he misspoke.
2 MJ: Okay.
3 ATC[CPT von ELTEN]: Finally, Your Honor, the defense raises
4 arguments regarding the weight of the evidence, not the
5 admissibility, and should present that evidence in the case in chief.
6 Thank you.
7 MJ: Hold on just a minute.
8 ATC[CPT von ELTEN]: Yes, ma'am.
9 MJ: M.R.E. 902(11) requires the certificate to state that the
10 record was made at or near the time of the occurrence of the matter
11 set forth by or with information transmitted by a person with
12 knowledge of those matters. How does the attestation from archive.org
13 say that?
14 ATC[CPT von ELTEN]: Ma'am, the attestation says that the records
15 were created in Internet archive results at or near the time.
16 Paragraph 2: To the best of the electronic systems involved and
17 accurately record and reflect, such files were captured at or near
18 the time the date reflected in the URL.
19 MJ: This is where I'm confused again. This crawling process is
20 Internet.org crawling or is a third-party crawling?
21 ATC[CPT von ELTEN]: Internet Archive is attesting that the
22 documents were captured at the time reflected in the URL.
23 MJ: Captured by Internet.org or captured by someone else?

1 ATC[CPT von ELTEN]: Either system, ma'am.

2 MJ: So it could be a donated, something donated as well?

3 ATC[CPT von ELTEN]: Yes, ma'am. But Internet archive relies on

4 those results and integrates them into their own records. And,

5 ma'am, the defense has presented no evidence that the WikiLeaks --

6 that Prosecution Exhibit 109 for Identification was donated.

7 MJ: Well, you haven't presented any that this was captured by

8 Internet Archive, have you?

9 ATC[CPT von ELTEN]: We have the attestations saying that it's

10 accurately reflected in the records.

11 MJ: It says were captured or were received by a third-party.

12 So we don't know really.

13 ATC[CPT von ELTEN]: There's no definitive evidence, ma'am.

14 MJ: Defense, any final words? Well, the government has the

15 final words, but any further words?

16 ADC[CPT TOOMAN]: Yes, ma'am. I believe you wanted us to

17 address whether or not the list or the web is a fixed document.

18 MJ: Yes. I mean do you see the distinction here? As I'm

19 looking, is this a streaming video, is this like Prosecution Exhibit

20 109 for Identification, when you pull it up, is it like CNN, it

21 changes, something drops off at the end and something new comes up in

22 the beginning?

1 ADC[CPT TOOMAN]: Well, we don't know, Your Honor. We would
2 say that based on Defense Exhibit Foxtrot, that would suggest that
3 this is a list that is being added to. There's the opportunity to
4 add things to it, and so in our mind that would make it a live
5 document. Things could get added later, maybe they'd get something
6 and then take it off, so we don't know. But certainly the
7 introductory language would suggest that it is a living document
8 that's going to change over time.

9 MJ: Okay.

10 ADC[CPT TOOMAN]: If I may publish, Your Honor, the affidavit
11 the defense received from Mr. Butler.

12 MJ: Certainly. That would be, for the record, Enclosure 10 to
13 the defense brief?

14 ADC[CPT TOOMAN]: Yes, ma'am. I will zoom in here on
15 Paragraph 7. And Paragraph 7 of this says that for the year Internet
16 Archive largely, and I'm not quoting here, but it mostly relied on
17 third parties to donate. Third parties were the ones making the
18 donations. So in this case we don't know. It's possible that
19 Internet Archive could have done it, but it's more likely that it
20 would have come from a third-party. And this attestation says that
21 these were, they don't know if the person who got it has personal
22 knowledge. The last sentence there of Paragraph 7, do not affirm
23 that these web archives were set forth by, or from information

1 transmitted by people with the knowledge of the information recorded
2 therein. So we would say that it fails the 902(11) analysis. And
3 that's in part because the snapshot that these archives give us are
4 just that, they're a snapshot, and we don't know whether or not the
5 process by which they were acquired is valid because we're not
6 hearing from those people. The government referenced Mozilla Firefox
7 and deleting browsing history. Your Honor, I don't recall if we
8 asked Agent Shaver this question, but if we didn't, we'll ask him the
9 next time he's on the stand and he'll tell us that deleting Internet
10 history in Mozilla Firefox is a default setting. So if he hasn't
11 already said it, he will say it.

12 MJ: I don't recall him saying it. That doesn't necessarily
13 mean it's not on the record.

14 ADC[CPT TOOMAN]: I don't recall him saying it either, but I'm
15 proffering to you he will say it the next time he's on the stand.
16 And so that's ----

17 MJ: So the web deleting history is the default setting?

18 ADC[CPT TOOMAN]: The government just brought up that Mozilla
19 Firefox was set up to clear browsing history.

20 MJ: I got it. Government, do you agree with that?

21 ATC[CPT MORROW]: Your Honor, yes. It was configured to
22 delete browsing history, and we would agree that that may or may not
23 be the default assist setting.

1 MJ: They're saying it is the default setting. You're saying it
2 may or may not be.

3 ATC[CPT MORROW]: I don't recall whether that is the default
4 setting of Mozilla. It could be. But the point is that history
5 doesn't exist because it was configured that way.

6 MJ: All right. You all can ask him the question. I don't have
7 any evidence before me otherwise.

8 ADC[CPT TOOMAN]: Yes, ma'am. We've only done a very brief
9 review of the *Dababneh* case, but we would point out that that is the
10 check case, like Your Honor mentioned, and we think we've addressed
11 the differences there. With the check you can kind of look at it and
12 see. And also, that was, it appeared that that was kind of a normal
13 thing, like these people would always send checks and so, again,
14 there was that understanding of how the system was working. Here
15 with Internet.org or archive.org it's an ad hoc process. You have
16 someone, maybe I decide one day that I want to do it and I give them
17 some stuff and I decide I don't want to do it anymore. So Internet
18 Archive.org doesn't have any knowledge of the process.

19 MJ: Assume what you said is correct though. Would that have
20 any bearing on the validity of what's there if it may not be
21 complete? You may not be able to go back to January 1st of 2009 and
22 see every Internet site in existence, but does that mean the ones you
23 can see have reliability issues?

1 ADC[CPT TOOMAN]: We think it does. We think that the person
2 who actually took the site, you have to have personal knowledge,
3 someone with personal knowledge. And certainly Internet Archive has
4 personal knowledge of what someone gave them. And they can tell you
5 all day this is what Bill gave or whoever gave us, but they can't say
6 that the process Bill used was a valid process or stuff hasn't been
7 tampered with. Subject to your questions, ma'am.

8 MJ: I think I just asked them. Thank you. Government, any
9 last words?

10 ATC[CPT von ELTEN]: Yes, ma'am. The attestation highlighted by
11 defense also says that the archive data obtained from the third-party
12 organizations was, quote, 'captured by automated electronic systems,'
13 end quote.

14 MJ: You're reading Paragraph 7 again?

15 ATC[CPT von ELTEN]: Yes, ma'am.

16 MJ: All right. Anything else?

17 ATC[CPT von ELTEN]: No, ma'am.

18 MJ: All right. I believe we discussed yesterday that we will
19 be holding a status conference on Tuesday at 0930 and the plan will
20 be then to proceed with additional taking of evidence on Wednesday at
21 0930. Is that the understanding of the parties?

22 TC[MAJ FEIN]: Yes, ma'am.

23 CDC[MR. COOMBS]: Yes, Your Honor.

1 MJ: All right. Is there anything else that we need to address
2 that's going to disturb that?

3 TC[MAJ FEIN]: No, ma'am.

4 CDC[MR. COOMBS]: No, Your Honor.

5 MJ: Anything else we need to address at all before we recess
6 the Court?

7 TC[MAJ FEIN]: No, ma'am.

8 CDC[MR. COOMBS]: No, ma'am.

9 MJ: Court is in recess.

10 [The court-martial recessed at 1110, 18 June 2013.]

11 [END OF PAGE]

1 [The court-martial was called to order at 0942, 25 June 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties when the
5 Court last recessed are again present with the following exceptions:
6 Mr. Chavez, court reporter, is absent. Mr. Robertshaw, court
7 reporter, is present. Your Honor, correction. Mr. Robertshaw was
8 here last week. It was so long ago I forgot. Also Captain von Elten
9 is absent; Captain Whyte is present.

10 MJ: All right. Thank you. Do you have a report for the media
11 operations center as well?

12 TC[MAJ FEIN]: Yes, ma'am. Ma'am, as of this morning at the
13 start of the session there are 11 members of the media at the media
14 operation center, one stenographer and there's approximately 15
15 spectators in the courtroom. There are no spectators in the trailer,
16 although the trailer is available to be used, if needed.

17 MJ: All right. Thank you. Counsel and I met in a brief R.C.M.
18 802 conference this morning. Once again, those are conferences where
19 I go over logistics and scheduling issues with counsel, and we have
20 arrived at an order of march for this week. Today will be a
21 relatively short session. We're going to basically just introduce
22 what the parties have added to the record since the last session, and
23 then at 11:30 today we will be having oral argument with respect to

1 judicial notice motions that have been filed by both sides. The
2 defense filed one, the prosecution then filed another one. And then
3 the Court will be taking that under advisement and the Court will go
4 in recess for today. And tomorrow we will begin again with the
5 presentation of evidence.

6 Now, Major Fein, would you like to discuss, for the record
7 I believe we have a grant of immunity that has been signed?

8 TC[MAJ FEIN]: Yes, Your Honor. What has been marked as
9 Appellate Exhibit 578 is a grant of immunity for a witness based off
10 a request -- well, the government's request. Also, Your Honor, to
11 account for housekeeping purposes, the government's response to
12 defense motion for judicial notice has been marked as Appellate
13 Exhibit 574. The defense -- The government's motion for judicial
14 notice and the defense's response will be marked once they're
15 complete, as 576 and 577 to be reflected later. Also the government
16 order of witness list update has been marked as Appellate Exhibit
17 575.

18 MJ: Just for the record, at the 802 conference the government
19 advised me that the government had already emailed to the defense and
20 the Court with respect to what their motion for judicial notice was
21 had an error in it, and they've revised that error in a corrected
22 copy to be filed for the record. Defense's response to that motion
23 responded to the motion as it originally was. It's just a minor

1 change. And the defense also intends then to file a corrected copy
2 of its response. The original copies are not going to go into the
3 record at this point because they're not accurate and the parties
4 don't want them in the record, so the corrected copies will be the
5 judicial notice motions. Is that accurate?

6 TC[MAJ FEIN]: Yes, ma'am.

7 CDC[MR. COOMBS]: Yes, Your Honor.

8 MJ: Okay. Now, two issues also arose at the R.C.M. 802
9 conference. One of them is whether the government asked whether the
10 Court would require classified stipulations or portions of
11 stipulations that contained classified information to be read on the
12 record in classified sessions. I asked the defense for their
13 position on that. The Court can read the stipulation, I'm the finder
14 of fact, but defense, what was your position on that?

15 CDC[MR. COOMBS]: Yes, Your Honor. The defense does not have
16 an objection to the Court reading the classified portions and
17 therefore not requiring the government to read those in a closed
18 session. Additionally the defense does not have an objection to the
19 Court having access to the stipulations of expected testimony during
20 your deliberations.

21 MJ: Thank you.

22 TC[MAJ FEIN]: And, ma'am, also I just add one more thing
23 discussed in chambers. The classified stipulations of expect --

1 excuse me, the stipulations of expected testimony will be portion
2 marked, so those portions that are unclassified will be read on the
3 public record. It's only those portions that are classified that
4 won't be.

5 MJ: Is there anything else that we need to address at this
6 point that has not been discussed?

7 TC[MAJ FEIN]: No, ma'am.

8 CDC[MR. COOMBS]: No, Your Honor.

9 MJ: All right. Is 11:30 sufficient for the parties to
10 reconvene and argue the judicial notice motions?

11 TC[MAJ FEIN]: Yes, ma'am.

12 CDC[MR. COOMBS]: Yes, Your Honor.

13 MJ: Court is in recess.

14 **[The court-martial recessed at 0947, 25 June 2013.]**

15 **[The court was called to order at 1137, 25 June 2013.]**

16 MJ: Court is called to order. Let the record reflect all
17 parties present when the Court last recessed are again present in
18 court. Major Fein, would you like to add for the record what has
19 been added as appellate exhibits or other exhibits?

20 TC[MAJ FEIN]: Yes, ma'am. Ma'am, first is an appellate
21 exhibit, what has been marked as Appellate Exhibit 580 is the
22 assumption of command orders for Major General Jeffrey Buchanan the
23 new commander, United States Army, Military District of Washington

1 and the general court-martial convening authority for this court-
2 martial effective as of 0001 hours 24 June 2013. Your Honor, what
3 has been marked -- I'm sorry. May I have a moment, Your Honor?

4 MJ: Yes.

5 TC[MAJ FEIN]: Your Honor, what has been marked as Prosecution
6 Exhibit 135 Alpha is the same document that was previously marked
7 Prosecution Exhibit 135 Alpha, that is a stipulation of expected
8 testimony from Miss Cathryn Strobl. This stipulation of expected
9 testimony was read onto the record but there was a mistake in
10 redactions and that mistake has been corrected. The defense has been
11 provided a copy and so has the Court and the record as well. Again,
12 that's Prosecution Exhibit 135 Alpha.

13 Also, Your Honor, what has been replaced in the record with
14 a cleaner, more legible copy is Prosecution Exhibit 138 is for
15 Identification and 139 for Identification. Those are screenshots of
16 the open source center log-in account information, again, Prosecution
17 Exhibit 138 for Identification and Prosecution Exhibit 139 for
18 Identification. Those both are referenced by the stipulation of
19 expected testimony of Mr. Maxwell Allen, Prosecution Exhibit 137.
20 And United States moves to admit Prosecution Exhibits 138 and 139 for
21 Identification as Prosecution Exhibits 138 and 139.

22 MJ: Any objection?

23 ADC[MAJ HURLEY]: No, ma'am.

1 MJ: All right. I notice Prosecution Exhibits 138 for
2 Identification and 139 for Identification are more legible than the
3 original copies. As such, the Court will admit them in the absence
4 of defense objection. Is there anything else we need to address
5 before we turn to the motions at issue?

6 TC[MAJ FEIN]: Yes, ma'am. The government's motion for judicial
7 notice, its corrected copy has been marked as Appellate Exhibit 576
8 and the defense's response to the government's motion for judicial
9 notice, its updated response, has been marked as Appellate Exhibit
10 577. That is all the documents that have been marked, Your Honor.

11 MJ: All right. Are the parties ready to proceed with oral
12 argument?

13 ADC[CPT TOOMAN]: Yes, ma'am.

14 ATC[CPT WHYTE]: Yes, ma'am.

15 MJ: Why don't we begin with the defense requests for judicial
16 notice as they were filed first? Captain Tooman.

17 ADC[CPT TOOMAN]: Yes, ma'am. Ma'am, I'll begin with the
18 Apache classification review which was conducted by Rear Admiral
19 Donegan. The defense believes this is proper for judicial notice
20 because, first off, it's relevant to the charges for the Apache
21 video, whether or not that was closely held. And in response to the
22 government's ----

1 MJ: Let me just ask you a question. I'm sorry to interrupt you
2 a little bit. Government, I believe in your response you said that
3 you -- the government hasn't presented any evidence and doesn't
4 intend to present any evidence that that video was classified.

5 ATC[CPT WHYTE]: That's correct, Your Honor. It's not
6 inconsistent with the government's position that it's not classified.
7 It's an unclassified video.

8 MJ: Are you willing to stipulate to that?

9 ATC[CPT WHYTE]: Yes, ma'am, we will stipulate that it was an
10 unclassified video. We obviously will not stipulate that it was not
11 closely held.

12 MJ: So if you're stipulating that it's an unclassified video,
13 what is the additional relevance of this statement by Rear Admiral
14 Donegan?

15 ADC[CPT TOOMAN]: We believe that it would rebut Prosecution
16 Exhibit 117 which is the stipulation for CW5 Larue.

17 MJ: Okay. Hold on just a minute. And that is where in your
18 brief?

19 ADC[CPT TOOMAN]: It wasn't in our brief, Your Honor, because
20 we weren't aware of that being the government's position when we
21 filed our brief, when we filed our request. At that point we weren't
22 aware the government was taking the position that the memo from
23 Admiral Donegan was consistent with what they have put forward.

1 MJ: So it rebuts testimony of Chief Larue?

2 ADC[CPT TOOMAN]: Yes, ma'am.

3 MJ: May I see Prosecution Exhibit 117, please?

4 ADC[CPT TOOMAN]: We point your attention to Paragraph 8,
5 ma'am, in which Chief Larue discusses his opinion of the video
6 contains TTPs and sensitive Army Aviation information. We believe
7 the memorandum from Rear Admiral Donegan to the Judge Advocate
8 General of the Army rebuts that and says that there are no TTPs.

9 MJ: All right.

10 ADC[CPT TOOMAN]: And the defense believes that this would be
11 proper for judicial notice using the test from *Salerno*. This is an
12 official correspondence from Rear Admiral Donegan to a three star
13 general, the Judge Advocate General of the Army. It's on official
14 letterhead. For those reasons we think it has the reliability of
15 testimony. There's no reason to believe that Admiral Donegan was not
16 being forthright in his correspondence to TJAG. So we believe it
17 would satisfy the test of *Salerno*. The government also points out
18 that Admiral Donegan is on their witness list for sentencing; that
19 won't do us any good to cross-examine him on sentencing about
20 something relevant on the merits.

21 MJ: Is there a stipulation of expected testimony from him or
22 not?

23 ADC[CPT TOOMAN]: For Admiral Donegan?

1 MJ: Yes.

2 ADC[CPT TOOMAN]: No, ma'am. He's just a sentencing witness.

3 MJ: What is the defense's position with respect to the first
4 part of the *Salerno* test whether it's an assertion of fact or an
5 opinion?

6 ADC[CPT TOOMAN]: We believe this is an assertion of fact. We
7 don't have -- We have Rear Admiral -- or I'm sorry, Vice Admiral
8 Harward who is the OCA. We have a stipulation of testimony from him
9 for the CENTCOM stuff. He doesn't address this particular video and
10 so our position would be this correspondence from Rear Admiral
11 Donegan is the closest thing we have to an OCA assessment of the
12 video.

13 MJ: Okay. Why don't we run through all three of them and then
14 I'll let the government talk.

15 ADC[CPT TOOMAN]: Yes, ma'am.

16 MJ: All right. I think I understand your position.

17 ADC[CPT TOOMAN]: Okay. With respect to the transcript, the
18 defense -- the transcript of the Apache video, the defense has no
19 issue with the changes that the government made and so it seems from
20 their response that they would be okay with the Court taking judicial
21 notice of the second enclosure from their response.

1 MJ: Does the government have any objection to me taking
2 judicial notice of the enclosure, second enclosure to your response
3 as edited?

4 ATC[CPT WHYTE]: Yes, ma'am. We would agree to stipulate to
5 the transcript as being a verbatim transcript of the video. We don't
6 think it's actually proper for judicial notice.

7 MJ: Why not?

8 ATC[CPT WHYTE]: Because there are no facts to support that
9 this actually is correct, and also this isn't commonly known in the
10 community.

11 MJ: So if you're stipulating that this is an accurate
12 transcript, if the defense were to offer the transcript itself, there
13 would be no authentication objection, right?

14 ATC[CPT WHYTE]: That is correct, ma'am.

15 MJ: So, Captain Tooman, what's the difference? I mean, why
16 should I take judicial notice of it if you can just introduce it as
17 an exhibit?

18 ADC[CPT TOOMAN]: That's fine, Your Honor. We'll offer it as
19 an exhibit. I would think you could because it's easily verifiable.
20 You can watch the video and follow along and you can see that it's
21 accurate. So we think that it is proper for judicial notice because
22 you could easily verify it.

1 MJ: Okay. Government, I know I'm going to let you argue here,
2 but if I go through the video and I go step by step and this
3 transcript is -- is this going to be exactly what the defense says,
4 that's what I'm going to be hearing in Enclosure 2?

5 ATC[CPT WHYTE]: Yes, ma'am, it is. It's verbatim. We
6 confirmed.

7 MJ: Okay. I understand. Is that -- So that's the only
8 objection that I saw that the government had to the Court taking
9 judicial notice of that transcript. Is that correct?

10 ATC[CPT WHYTE]: Yes, ma'am.

11 MJ: All right. Captain Tooman, proceed.

12 ADC[CPT TOOMAN]: Thank you, ma'am. I guess the last piece at
13 issue would be the relevance of the FOIA correspondence related to
14 the Farah or the Gharani video. There we think this is relevant.
15 The government's response to this suggested there was no evidence
16 before the Court that PFC Manning had any knowledge of this. We
17 would point the Court to Prosecution Exhibit 30 which ----

18 MJ: Why isn't that in your brief?

19 ADC[CPT TOOMAN]: Again, Your Honor, we weren't aware of the
20 government's objection when we drafted our brief.

21 MJ: All right. Your brief talks about the providence inquiry.
22 Does the defense agree with me that nothing that would -- the

1 providence inquiry establishes elements? Whatever is said in the
2 providence inquiry is not evidence before the Court?

3 ADC[CPT TOOMAN]: Yes, ma'am.

4 MJ: So I'm summarily ruling against the defense in that
5 respect.

6 ADC[CPT TOOMAN]: Understood. Yes, ma'am.

7 MJ: So what's Prosecution Exhibit 30? May I see it, please?

8 ADC[CPT TOOMAN]: Ma'am, those are the chats between PFC
9 Manning and Adrian Lamo.

10 MJ: Before we get there, your second basis that you have in the
11 brief is it's going to rebut statements by Miss Showman. To the
12 Court's knowledge the government hasn't introduced those statements.
13 Is that an accurate statement of fact at this point?

14 ADC[CPT TOOMAN]: Yes, ma'am.

15 MJ: Okay.

16 ATC[CPT MORROW]: Your Honor, if I may, are we referring to
17 the FOIA request for the Farah or the Ghranai. Captain Tooman said
18 the Gharani video. And the FOIA request in this case is for the
19 Apache video.

20 ADC[CPT TOOMAN]: I'm sorry. I misspoke. The FOIA request in
21 this case is for the Apache video. I am speaking of the FOIA request
22 for the Apache video. Your Honor, in the chats between PFC Manning
23 and Adrian Lamo, PFC Manning on May 25th at ----

1 MJ: What page?

2 ADC[CPT TOOMAN]: I'm not sure the page on the Prosecution
3 Exhibit, ma'am.

4 MJ: Why don't we do this, Captain Tooman? What I'll do is I'll
5 have the government get up and put their position with respect to the
6 first judicial notice request at issue, and then the defense team can
7 find the appropriate page and when you come back up for reply, we can
8 address that.

9 ADC[CPT TOOMAN]: Okay, Your Honor.

10 MJ: Is there anything else that you want to ----

11 ADC[CPT TOOMAN]: Well, I think the rest of our argument with
12 respect to this will rely on the chats.

13 MJ: Okay.

14 ADC[CPT TOOMAN]: Thank you.

15 MJ: Government, first of all, I understand from your brief
16 you're not objecting to the 911 Page or messages requests for
17 judicial notice. Is that correct?

18 ATC[CPT WHYTE]: Yes, ma'am.

19 MJ: In light of the fact that there's no objection, the Court
20 will take judicial notice of that.

21 ATC[CPT WHYTE]: So, ma'am, first with the defense request
22 that this Court take judicial notice of the CENTCOM classification --
23 --

1 MJ: Can you speak a little bit louder?

2 ATC[CPT WHYTE]: Yes, ma'am. I'm sorry. The defense is
3 requesting that this Court take judicial notice of the CENTCOM
4 classification assessment of the Apache video. The United States
5 obviously opposes. We think -- It's the government's position that
6 this is not an assertion of fact. Instead, if Your Honor reads Rear
7 Admiral Donegan's statement, that this is purely his opinion that
8 this video should be unclassified.

9 MJ: The defense at oral argument advised the Court that it's
10 being offered to rebut the testimony in Prosecution Exhibit 117 of
11 CW5 Larue regarding the TTPs. Is it the government's position that
12 the TTP portion of his declaration is an opinion versus an assertion
13 of fact?

14 ATC[CPT WHYTE]: Yes, ma'am. We think it's all in -- his
15 entire statement is an opinion, not him definitive saying this is
16 unclassified. Even the first few sentences it says it's in our -- I
17 forget the words, but I think he even says it's our opinion.

18 MJ: The sentence I'm reading it says, 'Under this category,
19 operational information may be unclassified if the information
20 describes a past event in general terms, provides no indicators of
21 potential future operations, does not provide specific locations,
22 unit data, TTPs, capabilities, or does not embarrass coalition
23 members.'

1 ATC[CPT WHYTE]: Yes, ma'am. But in the first sentence of the
2 second paragraph, where Rear Admiral Donegan says, 'In our view the
3 video in question should be unclassified,' that statement that you
4 just read, Your Honor, goes towards, again, his opinion. This is why
5 his opinion. This is why his opinion is that it should be
6 unclassified.

7 MJ: Well, let me ask a question and I'll ask it of the defense
8 first. Should I decline to take judicial notice of this statement
9 from Rear Admiral Donegan? Would the defense be requesting him as a
10 witness for the merits?

11 ADC[CPT TOOMAN]: Yes, ma'am.

12 MJ: So, government, if I decline to -- your basic objection is
13 hearsay. So if I decline to take judicial notice and the defense
14 asks for him as a witness, is the government prepared to produce him?

15 ATC[CPT WHYTE]: One second, Your Honor.

16 MJ: Yes, certainly.

17 **[There was a brief pause while the assistant trial counsel consulted**
18 **with the trial counsel.]**

19 ATC[CPT WHYTE]: Well, Your Honor, I think that we would
20 still prefer to litigate whether or not his testimony would be
21 relevant for the merits under a 703 litigation.

1 MJ: You have a stipulation of expected testimony from CW5 Larue
2 saying that he verified the results -- let's see, what does he say
3 here. Hold on. Do you have Prosecution Exhibit 117 in front of you?

4 ATC [CPT WHYTE]: Yes, ma'am.

5 MJ: This witness is saying that TTPs are a puzzle and revealing
6 any piece can make the puzzle easier for adversary. Wouldn't the
7 relevance of Rear Admiral Donegan's testimony to be to rebut that?

8 ATC [CPT WHYTE]: Your Honor, the defense is invited to offer
9 -- Rear Admiral Donegan is just stating what was actually included in
10 the classification guide as far as when I read Rear Admiral Donegan's
11 statement.

12 MJ: But if he's saying in his opinion it's not classified,
13 wouldn't that necessarily entail the fact that it wouldn't contain a
14 TTP or TTPs?

15 ATC [CPT WHYTE]: In his opinion, yes, ma'am. Not as in a
16 fact, him definitively saying it contains nothing. This is just his
17 opinion.

18 MJ: And that wouldn't go to rebut CW5 Larue's opinion?

19 TC [MAJ FEIN]: Ma'am, may we have a moment, please?

20 MJ: Yes.

21 [There was a brief pause while the assistant trial counsel consulted
22 with the trial counsel.]

1 MJ: The Court is happy to take a recess if the parties would
2 like.

3 TC[MAJ FEIN]: No, ma'am.

4 TC[MAJ FEIN]: Your Honor, if we may, may another counsel argue
5 this one point for the government?

6 MJ: Yes. Go ahead.

7 TC[MAJ FEIN]: Ma'am, the United States directs the Court's
8 attention to the actual General -- or excuse me, Admiral Donegan
9 memo. The purpose of the Admiral Donegan memo, Defense Enclosure 1,
10 to its motion, is Tasker CENTCOM Assessment of 1st Cav Division
11 Classification Determination of the Apache Video. The entire purpose
12 of this memorandum to the Office of Judge Advocate of the Army was to
13 do a classification review, to determine whether something was
14 classified or not. It wasn't to do a fact based analysis of whether
15 information was contained. TTP were or were not -- did or did not
16 exist. It's whether they warranted classification. TTPs and other
17 information provided in this memo could warrant classification, but
18 it doesn't mean it factually did or did not contain it. Again, the
19 purpose of this memo is exactly as it states in the memo, whether it
20 warrants classification. Therefore, does it cause -- could it cause
21 damage to national security, serious damage or grave damage? Admiral
22 Donegan's opinion in this memo, Your Honor, is it doesn't warrant any
23 of those protections, thus is unclassified, but there is no statement

1 here, the purpose of this memo isn't to say whether TTPs existed or
2 not. And the defense would object likely if the gov -- if the
3 defense -- excuse me -- the United States would likely object to it
4 if the defense filed a motion to compel production simply because it
5 is their conjecture that that is what he would say. They have no
6 clue that Admiral Donegan would say that the video does or does not
7 contain TTPs. It's only whether it warrants classification. And
8 Chief Larue's stipulation of expected testimony simply states the
9 fact it does contain TTPs.

10 MJ: Well, it goes beyond that. It says that the TTPs are a
11 puzzle and revealing any piece could make solving the puzzle easier
12 for an adversary.

13 TC[MAJ FEIN]: Yes, ma'am. But according to at least that video,
14 at that time on 13 October 2010, under Admiral Donegan, in his
15 opinion, not to the level that rises to warranting classification.
16 It doesn't mean TTPs doesn't exist. Again, the purpose for this memo
17 was to do a classification review. So going back to what my co-
18 counsel started with as an argument, this is an opinion of whether
19 something's classified based off the factors given. Those factors
20 are listed.

21 MJ: So is your objection then to the relevance of producing
22 this witness, is it the defense hasn't talked to them and doesn't
23 know what the witness is going to say about TTPs?

1 TC[MAJ FEIN]: That would be the first one, Your Honor. We'd
2 want to hear what the defense has to proffer about the entire scope
3 of the testimony. If it's simply to ask one factual question on
4 whether it did or did not have TTPs involved in the video, that's one
5 thing. If it's more than that ----

6 MJ: All right. I understand the government's position.

7 ATC[CPT WHYTE]: Ma'am, as far as the second fact that the
8 defense is asking this Court to take judicial notice of the FOIA
9 request it's not relevant at this point. There's no evidence that
10 PFC Manning had knowledge of this FOIA request or CENTCOM's alleged
11 response thereto, so we would object on relevance, ma'am.

12 MJ: Okay. And that's basically, I'll allow you to come back
13 too after the defense comes back because now they're going to tell me
14 what's in the Prosecution Exhibit 30 that they believe is going to
15 make this relevant. Go ahead.

16 ADC[CPT TOOMAN]: Thank you, ma'am. I will hand you
17 Prosecution Exhibit 30, as well as Prosecution Exhibit 15 which is
18 just a picture. Your Honor, we believe the government has put forth
19 evidence that would suggest that PFC Manning was aware of the Reuters
20 FOIA request. First we direct your attention to Prosecution Exhibit
21 15 which is a CD.

22 MJ: That's for identification.

23 ADC[CPT TOOMAN]: Yes, ma'am.

1 MJ: So it's not in evidence.

2 DC[CPT TOOMAN]: Right. The government has talked about it.

3 TC[MAJ FEIN]: Your Honor, 15 was admitted.

4 MJ: Oh, it was?

5 TC[MAJ FEIN]: Yes, Your Honor.

6 ADC[CPT TOOMAN]: The picture is a substitution, ma'am.

7 MJ: I see. Okay. Let me just actually go ahead and admit it

8 then. Both sides agree Prosecution Exhibit 15 is admitted?

9 TC[MAJ FEIN]: Yes, ma'am.

10 ADC[CPT TOOMAN]: Yes, ma'am. So you'll see on Prosecution

11 Exhibit 15 the CD titled CZ Engagement Zone, *et cetera, et cetera*, it

12 also says Reuters FOIA request. So that would suggest that PFC

13 Manning was aware of the Reuters FOIA request because he labeled it

14 Reuters FOIA request. Additionally, ma'am, in Prosecution Exhibit

15 30, the chat logs, there are a number of references to this incident

16 on Page 26 of your copy and going into Page 27.

17 MJ: Hold on.

18 ADC[CPT TOOMAN]: Starting at time marker, 3:10:32 seconds PM

19 PFC Manning is talking about this video. He's talking about doing

20 research on it. He's talking about the Finkel book.

21 MJ: You said it's on Page 26 of mine?

22 ADC[CPT TOOMAN]: Yes, ma'am. , and it goes into 27, I

23 believe. Time stamp 3:10:32.

1 MJ: Where does it talk anything about a FOIA request?

2 ADC[CPT TOOMAN]: He's talking about the video specifically,
3 Your Honor. Here he doesn't reference FOIA explicitly, but he's
4 talking about the research he did into the incident.

5 MJ: How is the FOIA request -- How does that tie into the FOIA
6 request?

7 ADC[CPT TOOMAN]: It suggests that he was aware of what
8 happened and he was looking into it. And if you look at Page 33,
9 again, he doesn't talk about FOIA request, but at time stamp 2:24:58
10 AM.

11 MJ: 2:24, okay. We must have different pages here. Because
12 that's on 34 of mine.

13 ADC[CPT TOOMAN]: I'm sorry, Your Honor. 34 of yours.

14 MJ: Okay.

15 ADC[CPT TOOMAN]: He's talking about -- Again, he's talking
16 about this video. And then on Page 33 of yours ----

17 MJ: Hold on. Okay. And I'm sorry. What's the next one?

18 ADC[CPT TOOMAN]: On your Page 33 at 2:07:41 AM, you see him
19 say event occurs in 2007. I watched video in 2009 with no context.
20 Do research. Forward information to group of FOIA Activists. So
21 there he's talking about freedom of information, he's talking about
22 researching the incident, and these things taken in totality suggests
23 that PFC Manning was aware of the FOIA request by Reuters.

1 Particularly when viewed in conjunction with Prosecution Exhibit 15
2 in which he labels the CD Reuters FOIA request. So based on that, we
3 think this is relevant and we've overcome the government's objection
4 because there is evidence that suggests PFC Manning was aware of this
5 FOIA request.

6 MJ: All right. Thank you. Captain Whyte.

7 ATC[CPT WHYTE]: Could we have one second, Your Honor?

8 MJ: Yes.

9 **[There was a brief pause while the assistant trial counsel consulted**
10 **with the trial counsel.]**

11 MJ: Before you start, Captain Whyte, I do have a question for
12 you. Your objection is based on relevance, initially because of the
13 providence inquiry as originally set forth by the defense in their
14 brief, and now you'll be addressing what has been raised in oral
15 argument. But before you do that, the actual enclosures themselves,
16 the Freedom of Information Act request and the response, does the
17 government object to its authenticity, the fact that when these
18 things were filed, what they say?

19 ATC[CPT WHYTE]: Your Honor, we would not object that the
20 defense has provided the Court with sources that pursuant to M.R.E.
21 201 are sufficient. They are reliable.

22 MJ: Okay.

1 ATC[CPT WHYTE]: So, Your Honor, based on this new argument
2 by the defense, it's obvious that PFC Manning labeled that CD FOIA
3 request. We would still argue it doesn't necessarily prove that PFC
4 Manning had knowledge of this particular request. It could have been
5 any type of request, or the contents of the request, or the fact
6 CENTCOM eventually did respond to the FOIA request. There's still no
7 evidence of that.

8 MJ: No evidence that of what?

9 ATC[CPT WHYTE]: That CENTCOM responded to the request.
10 Because the CD, as far as I remember, Your Honor, I don't have it
11 with me, but I think it said, labeled the event and then FOIA
12 request.

13 MJ: So if I'm understanding what you're telling me, there's no
14 evidence on the record that PFC Manning knew that CENTCOM, whether
15 CENTCOM did or did not respond to a FOIA request.

16 ATC[CPT WHYTE]: Correct. Yes, ma'am.

17 MJ: Okay. So is the government, what's the government's
18 position with respect to Enclosures 1 and 2, the fact that there were
19 FOIA requests? Or a FOIA request from Reuters.

20 ATC[CPT WHYTE]: As far as whether or not the Court should
21 take judicial notice?

22 MJ: Yes.

1 ATC[CPT WHYTE]: We don't object that there -- or we don't
2 oppose that there was a FOIA request. Again, these sources confirm
3 that that fact actually did happen. Again, we still don't think it's
4 relevant for judicial notice. The defense is free to offer this
5 evidence in their case.

6 MJ: Well, I think that's what -- you said that the defense is
7 free to offer this evidence in their case. So if the Court doesn't
8 take judicial notice of it, the defense is going to require witnesses
9 to authenticate the -- to testify about this and authenticate these
10 FOIA requests, right?

11 ATC[CPT WHYTE]: Yes, ma'am, and the government will
12 stipulate that these FOIA requests actually happened. But as far as
13 evidence that PFC Manning knew of the substance of the FOIA request
14 and knew that CENTCOM responded, we don't think at this point, Your
15 Honor, there's really any evidence out there that would support a
16 judicial notice.

17 MJ: I wouldn't be taking judicial notice that PFC Manning knew
18 that there was FOIA requests out there and that they responded. I'm
19 just taking judicial notice of the FOIA request itself. Those links
20 and those leaps and inferences, that's a job of the parties, not me.

21 ATC[CPT WHYTE]: Yes, ma'am.

22 MJ: So under those circumstances, I mean what ----

1 ATC[CPT WHYTE]: Then we wouldn't object, Your Honor, that
2 those actually happened and that the Court could take judicial notice
3 of those facts.

4 MJ: So you're not objecting any more.

5 ATC[CPT WHYTE]: We still don't believe that there's evidence
6 out there to confirm that, again, PFC Manning knew about this to
7 establish relevance for these FOIA requests.

8 MJ: So are you objecting to relevance? For judicial notice,
9 I'm not going to take judicial notice of something that's not
10 relevant. So talk to your compatriots there and tell me what the
11 government position is.

12 **[There was a brief pause while the assistant trial counsel consulted**
13 **with trial counsel.]**

14 ATC[CPT WHYTE]: Your Honor, we won't object that there was a
15 FOIA request and that there was a CENTCOM response, so we withdraw
16 our objection to that fact.

17 MJ: So the government is not objecting to the Court taking
18 judicial notice of Enclosures 1, 2, and 3 of the defense motion?

19 ATC[CPT WHYTE]: That's correct, Your Honor.

20 MJ: So just to wrap up here then, remaining at issue from the
21 defense motions for judicial notice that the government does not
22 object to the 9-11 pager messages and the government does not object
23 to the FOIA requests and the response. And the government does not

1 object to the transcript at Prosecution Exhibit 15, Enclosure 2 by
2 the government, that that's an accurate transcript of the video?

3 ATC[CPT WHYTE]: Yes, ma'am.

4 MJ: So all we have remaining at issue now is Rear Admiral
5 Donegan, right?

6 ATC[CPT WHYTE]: Yes, ma'am.

7 MJ: Both sides agree?

8 ADC[CPT TOOMAN]: Yes, ma'am.

9 MJ: All right. And let's move to -- is there anything else
10 that we need to address with respect to the defense requests for
11 judicial notice?

12 ADC[CPT TOOMAN]: No, Your Honor.

13 ATC[CPT WHYTE]: No, ma'am.

14 MJ: And I'm not going to hear any more about providence inquiry
15 statements made as evidence, right?

16 ADC[CPT TOOMAN]: Yes, ma'am. No, ma'am.

17 MJ: That was a double negative question, so let me -- I will be
18 hearing no further evidence, is that correct?

19 ADC[CPT TOOMAN]: That is correct, Your Honor.

20 MJ: All right. Let's move on to the prosecution request for
21 judicial notice.

22 ATC[CPT WHYTE]: Yes, ma'am. The United States requests that
23 this Court take judicial notice of several facts. It may be helpful

1 to break them up as we did in our motion. First of all, the
2 WikiLeaks releases. Your Honor, we request that the Court take
3 judicial notice of the five releases by WikiLeaks. The government --
4 The defense opposed alleging that we haven't established relevance.
5 We completely oppose that obviously under 401 -- M.R.E. 401, this
6 evidence is relevant. Not only to establish that or as evidence to
7 show that these documents or the video were closely held at the time
8 prior to the releases, but also for most of the offenses for
9 Specification 1 of Charge II, PFC Manning is charged with causing
10 intelligence to be published on the Internet. The fact that
11 WikiLeaks released these five sets of documents or media is relevant
12 to not only the closely held element of the 793 offenses, but also to
13 the Spec 1 of Charge II.

14 MJ: If it is relevant to those specifications, Specification 1
15 of Charge II, what other specifications do you -- this first grouping
16 of five, in addition to 793(e) specifications, what else is the
17 government claiming they're relevant to?

18 ATC[CPT WHYTE]: It's also relevant to the 641 offenses,
19 ma'am. PFC Manning is charged with stealing, purloining, or
20 knowingly converting these documents or this video and the fact that
21 WikiLeaks released it later is evidence to show that under the M.R.E.
22 401 standard that PFC Manning compromised those videos in the
23 timeframe alleged.

1 MJ: Why isn't any of that in your brief? The brief relies
2 solely on 793(e) offenses for relevance.

3 ATC[CPT WHYTE]: Yes, ma'am. And we think for the ----

4 MJ: I understand that. Why isn't -- I'm suddenly, once again,
5 at oral argument now having entirely new theories from both sides on
6 why I should take judicial notice of things. Why is that?

7 ATC[CPT WHYTE]: I have no excuse, Your Honor.

8 MJ: All right. Well, let's capture here in oral argument now,
9 so we've got, are you basically arguing to me that ----

10 ATC[CPT WHYTE]: Yes, ma'am. The fact that they were
11 released subsequent to the timeframe that PFC Manning is charged with
12 releasing the information or compromising, that that is evidence to
13 show that, I mean, that's evidence shows more likely than not that
14 PFC Manning did compromise the information during the alleged
15 timeframe.

16 MJ: So with respect to each of these pieces, the video, the
17 combined information, the CIDNE databases Iraq and Afghanistan, and
18 the Joint Task Force GTMO and the Army Counter Intelligence Center
19 reports are all relevant to the 641 offenses and the various
20 specifications that charge those data sets?

21 ATC[CPT WHYTE]: Yes, ma'am.

22 MJ: Okay. What else, 641, 793(e) as you've alleged, what else?

23

1 ATC[CPT WHYTE]: Yes, ma'am. Again, it was not alleged in
2 the brief, Specification 1 of Charge II, the element that PFC Manning
3 caused intelligence to be published on the Internet. The fact that
4 the information was published on the Internet is definitely relevant
5 to that element.

6 MJ: Any other offense?

7 ATC[CPT WHYTE]: No, Your Honor.

8 MJ: So the relevance then for this first group of sets, A
9 through E, WikiLeaks releases goes to Specification 1 of Charge II,
10 and then the 641 and 793(e) respective specifications.

11 ATC[CPT WHYTE]: Yes, ma'am.

12 MJ: And that's it?

13 ATC[CPT WHYTE]: Yes, ma'am. The next set of facts, Your
14 Honor, the salary of Servicemembers and government employees. The
15 Court has heard evidence through testimony and through a stipulation
16 of expected testimony that the documents, the detainee assessments as
17 well as the global address list, they were prepared and maintained by
18 persons at these ranks, ranks on the GS scale, so as far as the value
19 of this information, the value of producing this information is
20 definitely relevant.

21 MJ: So for those then you're ----

22 ATC[CPT WHYTE]: It's the 641 offenses, ma'am. The
23 Specification 8 and 16. The salary of Servicemembers at the grade of

1 E4, that's relevant to Specification 8 and 16. There's a stipulation
2 of expected testimony from Mr. Jeffrey Motes that confirm that
3 Soldiers at this rank helped create these detainee assessments and
4 that's at Prosecution Exhibit 131. And you also, Your Honor, there
5 was testimony from Chief Rouillard that Servicemembers at the rank of
6 E4, Specialist, were part of the maintaining and producing the global
7 address list, which is relevant for the valuation of those databases.
8 And Your Honor, same thing with the government employees, the GS-12
9 scale, GS-12 level. This is actually only relevant to Specification
10 8 of Charge II. Again, in Prosecution Exhibit 131 the stipulation of
11 expected testimony from Mr. Motes, the evidence is before the Court
12 that government employees at the GS-12 rank helped create the
13 detainee assessments.

14 Your Honor, moving to the next set of facts in subparagraph
15 hotel, we're asking the Court to take judicial notice of select
16 paragraphs in Army Regulation 25-1.

17 MJ: What's the relevance of that if PFC Manning is not charged
18 with that?

19 ATC[CPT WHYTE]: Yes, ma'am. It goes to Specification 4 of
20 Charge III where the accused is charged with using an information
21 system in a manner other than its intended purpose. This regulation
22 discusses what are some of the authorized and unauthorized purposes
23 of information systems, so we think this would benefit the Court by

1 reading this in conjunction with 25-2, the paragraphs that have
2 already been taken judicial notice of to assist the Court in
3 determining whether or not PFC Manning used an information system in
4 a manner other than its intended purpose. And, Your Honor, these
5 facts for AR 25-1, and again, Your Honor, I'm also including the
6 definition of information system which is an Army Regulation 25-2
7 which was put in the government's corrected copy, those are also
8 relevant to Specification 16 of Charge II where the accused is
9 charged with stealing, purloining or knowingly converting the global
10 address list. Again, these portions of the regulation discuss
11 information owned by the United States government and generally why
12 we don't just release it. So it's relevant to that 641 offense as
13 well, Your Honor. And then, Your Honor, lastly, what's termed as the
14 miscellaneous adjudicated facts. The defense ----

15 MJ: Wait a minute. What about the privacy program?

16 ATC[CPT WHYTE]: Oh, Your Honor, I'm sorry, Your Honor. Same
17 reasons as the Army regulations. This document talks about the
18 government's policy to protect PII type information and that it is a
19 thing of value and that it also is owned by the United States
20 government, so we would argue that it goes to Specification 4 of
21 Charge III as well as Specification 16 of Charge II. The same
22 reasons as outlined in the Army Regulation 25-1 and 25-2.

23 MJ: Okay.

1 ATC[CPT WHYTE]: Your Honor, lastly the ----
2 MJ: So, Thanksgiving is not objected to?
3 ADC[CPT TOOMAN]: No, ma'am.
4 ATC[CPT WHYTE]: So I guess we're only left with
5 Subparagraph Kilo, Lima and Mike. Your Honor, we argue that these
6 facts, which are actually evident in Prosecution Exhibit ----
7 MJ: Well, let's -- let's -- Mike is completely different from
8 Kilo and Lima, so let's go to Kilo and Lima.
9 ATC[CPT WHYTE]: Yes, ma'am. Kilo, the term ".is" is the top
10 level Internet domain of Iceland.
11 MJ: Okay. How is that relevant?
12 ATC[CPT WHYTE]: Your Honor, the accused in his chats with Mr.
13 Julian Assange specifically reference this term.
14 MJ: Can you show me that? And that would be Prosecution
15 Exhibit what?
16 ATC[CPT WHYTE]: 123, Your Honor.
17 MJ: May I see Prosecution Exhibit 123?
18 ATC[CPT WHYTE]: It's on Page 5, Your Honor.
19 MJ: Okay. Let me get the exhibit then.
20 ATC[CPT WHYTE]: Yes, ma'am.
21 MJ: All right. I'm looking at Prosecution Exhibit 123 at Page
22 5.
23 ATC[CPT WHYTE]: Yes, ma'am. At time 6:19:16.

1 MJ: Okay.

2 ATC[CPT WHYTE]: Then, Your Honor, so we think that defining
3 what this actually means helps with the Court to understand this
4 prosecution exhibit. Also, Your Honor, Paragraph Lima we identify
5 four individuals and we're asking the Court to take judicial notice
6 of their positions in the Icelandic government.

7 MJ: How is that relevant?

8 ATC[CPT WHYTE]: Again, Your Honor, the accused in the --
9 with the first three people, Your Honor, in Prosecution Exhibit 29
10 which is the volumes.txt document, these people's last -- the files
11 of these people's names is actually included in there. So, again, we
12 think it would be helpful ----

13 MJ: May I see that exhibit, please? Is that a classified
14 exhibit?

15 ATC[CPT WHYTE]: It is not, ma'am.

16 MJ: Okay. All right. I see what you're talking about. All
17 right.

18 ATC[CPT WHYTE]: Then, Your Honor, the fourth person ----

19 MJ: Hold on just a minute. Is this -- Has Prosecution Exhibit
20 39 been admitted?

21 ATC[CPT MORROW]: Ma'am, the admitted version of that
22 screenshot is Prosecution Exhibit 127. It's the same information.

23 MJ: Why is it marked as an exhibit twice?

1 ATC[CPT MORROW]: For the opening statement, ma'am, we marked
2 it as an exhibit for display, and then that same information was --
3 we put line numbers on it, so that's Line 7 so we can refer to it
4 during testimony so that changes sort of the length ----

5 MJ: 127. All right. Do both sides agree that Prosecution
6 Exhibit 127 that's admitted is the same as Prosecution Exhibit 39 for
7 Identification with respect -- except with respect to the line
8 numbers?

9 ADC[CPT TOOMAN]: Yes, ma'am.

10 MJ: So let's talk about Prosecution Exhibit 127 the one that's
11 been admitted. Okay. I see the three names are there. Okay. I'm
12 sorry. Once again, may I see Prosecution Exhibit 39 again? Counsel,
13 I'm a little confused. Both sides have agreed that these two
14 exhibits are the same, but they're not in the same order, so I guess
15 I'm confused. If you look at the names you'll see that.

16 TC[MAJ FEIN]: Your Honor, I'm holding Prosecution Exhibit 39
17 for Identification and Prosecution Exhibit 127. The Court heard
18 testimony from Mr. Mark Johnson that when he was presented
19 Prosecution Exhibit 127 he explained that there were line numbers
20 from the document he created. This document is in alphabetical
21 order, or if there's a number, it's number order. The information is
22 identical, it's just the order in which it falls is different.

1 MJ: Okay. Thank you. All right. Anything further with K and
2 L?

3 ATC[CPT WHYTE]: Yes, ma'am. The last person in Paragraph L,
4 that person is not in Prosecution Exhibit 127, but that person is
5 identified by the accused in the Intelink charts, the summary, that's
6 a classified prosecution exhibit, but this person was a search term
7 used by the accused. And, Your Honor, I can give you the line
8 number, it is a classified exhibit, I can give you the line number
9 that specifically references this person.

10 MJ: Which exhibit and which line?

11 ATC[CPT WHYTE]: It's going to be Prosecution Exhibit 49,
12 and, ma'am, it's line number 578 through 581.

13 MJ: All right.

14 ATC[CPT WHYTE]: Sorry, Your Honor. It's actually
15 Prosecution Exhibit 81.

16 MJ: So it's not 49, it's 81?

17 ATC[CPT WHYTE]: Yes, ma'am. Sorry.

18 MJ: I think you might want to send someone out with your person
19 who was going to retrieve Prosecution Exhibit 49. All right. Let's
20 move on to M.

21 ATC[CPT WHYTE]: Yes, ma'am.

22 MJ: I have a question about M. Your exhibit here, your
23 Enclosure 13 is basically acronyms for PE 30 with time, page, context

1 and translation. How do I have any idea based on what you've
2 presented that this is an adjudicative fact that can be found -- that
3 I can find for judicial notice?

4 ATC[CPT WHYTE]: Your Honor, we would argue that this is a
5 commonly -- commonly used acronyms for people that do engage in
6 Internet chat with other people, and these are just commonly used
7 terms in Internet chat communications.

8 MJ: Defense, do you stipulate to that?

9 ADC[CPT TOOMAN]: No, ma'am.

10 MJ: How would I have any idea based on this that that's true?

11 ATC[CPT WHYTE]: One second, please.

12 **[There was a brief pause while the assistant trial counsel consulted**
13 **with the trial counsel.]**

14 ATC[CPT WHYTE]: Ma'am, this information was compiled from
15 multiple resources that we can provide the Court.

16 MJ: If you want judicial notice of M, I highly suggest you do
17 that.

18 ATC[CPT WHYTE]: I will, yes, ma'am. I'll do that. Ma'am,
19 no further questions?

20 MJ: No. I think I've asked them. Thank you.

21 ATC[CPT WHYTE]: Yes, ma'am.

22 TC[MAJ FEIN]: Ma'am, just to correct one thing that
23 unfortunately Captain Whyte said earlier, although the United States

1 did in its theory of relevance not put in for the first category of
2 WikiLeaks releases Specification 1 of Charge II, all of the 641s were
3 briefed in here along with the 793 offenses. So on Page 3, and Page
4 4.

5 MJ: All right. So then the only one that's added then is
6 Specification 1 of Charge II?

7 TC[MAJ FEIN]: Yes, ma'am. That was not briefed and should have
8 been.

9 MJ: Okay. Captain Tooman. Before you begin, let me ask you a
10 question.

11 ADC[CPT TOOMAN]: Yes, ma'am.

12 MJ: Your objections to all of these are relevance. Do you have
13 any objection -- should I find them relevant, is there any objection
14 to these being adjudicative facts?

15 ADC[CPT TOOMAN]: Well, I guess the one we just talked about,
16 exhibit ----

17 MJ: That one aside.

18 ADC[CPT TOOMAN]: That one aside, no, ma'am.

19 MJ: Okay.

20 ADC[CPT TOOMAN]: So we'll start with the -- I guess that
21 first group of five, Alpha through Echo.

22 MJ: Okay.

1 ADC[CPT TOOMAN]: I guess the first point we would make is the
2 actions of WikiLeaks are independent from the actions of PFC Manning.

3 MJ: Well, with respect to Specification 1 of Charge II, isn't
4 one of the elements that they have to be -- that PFC Manning caused
5 to be published; the fact that they are published would go towards
6 that offense?

7 ADC[CPT TOOMAN]: Yes, but we would -- Can I have a moment,
8 Your Honor?

9 MJ: Yes.

10 **[There was a brief pause while the assistant defense counsel**
11 **consulted with the civilian defense counsel.]**

12 ADC[CPT TOOMAN]: Again, Your Honor, we would just -- we would
13 -- our position would be that that's an intervening cause. What's
14 relevant here is what PFC Manning did. PFC Manning, if he gave it to
15 WikiLeaks, that's what the government would need to prove. Again, I
16 guess this would go back to our argument on Spec 1 of Charge I, where
17 we didn't believe that the government had to prove actual receipt by
18 the enemy. We would have a similar position here.

19 MJ: All right. I understand your position.

20 ADC[CPT TOOMAN]: In addition, we don't believe it's relevant
21 at all to the 793s. Again, the actions of WikiLeaks don't impact
22 whether or not a piece of information is closely held. The
23 government's offered no -- there's no evidence before this Court that

1 WikiLeaks only publishes things that are closely held. There's no
2 evidence before this Court that WikiLeaks understands the definition
3 employed by the United States government with respect to closely held
4 and then employs that in their publishing decisions.

5 MJ: Wouldn't an organization by the name of WikiLeaks lead to
6 the inference that it is publishing leaks?

7 ADC[CPT TOOMAN]: That could be an inference, Your Honor, but
8 an inference wouldn't be proper for judicial notice. So if the
9 government wanted you to draw that inference, they could certainly
10 welcome ---

11 MJ: No, no, no. I agree we're talking relevance now is your
12 objection. You're saying it's not relevant because WikiLeaks there's
13 -- no evidence before the Court that WikiLeaks only publishes leaks
14 and whether they know of a technical definition of closely held. You
15 know, relevance doesn't mean it has to prove everything, it just
16 means it has to be a piece of the pie.

17 ADC[CPT TOOMAN]: Sure. Our position would be that closely
18 held is a term of art and ----

19 MJ: No, I agree.

20 ADC[CPT TOOMAN]: And WikiLeaks would have to -- for their
21 actions to be relevant, they would have to understand that. The fact
22 that they did it, they could publish anything. They publish I would
23 imagine lots of things that wouldn't meet the definition of closely

1 held. And so the fact, the mere publishing of it doesn't make it
2 more likely than not that this particular piece of information or
3 that particular piece of information was closely held. Closely held
4 is something that is determined by the government.

5 MJ: Okay. Well, it will be determined by me in this case, but
6 okay.

7 ADC[CPT TOOMAN]: Yes, ma'am. Or the actions of the
8 government and the way the government comports themselves with
9 respect to certain information is how we figure out whether or not,
10 and you will figure out whether or not something is closely held, not
11 by what WikiLeaks does or doesn't do with it. And with respect to
12 the 641s, Your Honor, it's our belief this isn't going to help you
13 determine whether or not these things have value at all. And we
14 don't believe the governments articulated how it would help you
15 determine value. And the government has to prove that these were
16 worth more than a thousand dollars, and the fact that WikiLeaks
17 published it doesn't help you assign any dollar value.

18 MJ: Doesn't the fact that WikiLeaks has the information, the
19 fact that they published it means that they necessarily have it,
20 isn't that relevant to show that PFC Manning stole it?

21 ADC[CPT TOOMAN]: Not necessarily, Your Honor. There's no
22 evidence before this Court that the government's been denied their
23 use of this information, and that's been a theme throughout the

1 witness testimony is that the government's always had the information
2 and so ----

3 MJ: Does that -- In the legal theory the defense is going to
4 have down the road is that that's a requirement for a 641 offense?

5 ADC[CPT TOOMAN]: We think that you would have to show some
6 interference with the charged thing, and that, the fact that
7 WikiLeaks has posted it doesn't demonstrate any interference.

8 MJ: All right.

9 ADC[CPT TOOMAN]: With respect to F and G, Your Honor, again,
10 we would object based on relevance. Based on what this request is
11 calling for the Court to do is draw inferences. We've heard some
12 testimony that some people worked on this, this was their rank, but
13 we didn't hear any testimony about how much time they were actually
14 spending on it or how much time they were spending on this with
15 relation to other things. You heard some general testimony that,
16 yeah, generally we've got E4s working on this or Mr. Motes is a GS-
17 12, but you don't have any testimony as to how much time they were
18 actually dedicating to these things. And so what the government's
19 asking you to do is infer and extrapolate yourself the value of these
20 things, and that's the government's burden is to show you the value
21 of these things.

22 MJ: Even if that's true, your objection here is that this, the
23 salary of an E4 and base salary of government employees is not

1 relevant. Understanding that the government would -- The
2 government's position would be that people worked a certain amount of
3 hours, therefore times whatever this salary range is equals X amount
4 of value. Why would the salary range not be relevant?

5 ADC[CPT TOOMAN]: We think that this is testimony that should
6 be brought out through the witness.

7 MJ: Why? I mean this is one of these -- you've already told me
8 you're not objecting to the adjudicative fact. This is what the
9 salary of an E4 is. I mean is that debatable?

10 ADC[CPT TOOMAN]: No, it's not, Your Honor.

11 MJ: That's what I'm taking judicial notice of, I'm not -- I
12 would not be taking judicial notice of any inferences to be drawn by
13 this just that it exists and that's what the salary level of an E4 is
14 in X period of time.

15 ADC[CPT TOOMAN]: Okay. That's -- I think -- May I have a
16 moment, Your Honor?

17 MJ: Yes.

18 **[There was a brief pause while the assistant defense counsel**
19 **consulted with the civilian defense counsel.]**

20 ADC[CPT TOOMAN]: Your Honor, I guess the other piece of the
21 relevance would be the I guess tying -- we would agree that in 2004
22 or whatever year an E4 made X amount of dollars, but it's tying that
23 value with what those people actually did at that time and we don't

1 think that this is relevant for that. That's what's important for
2 the Court.

3 MJ: I understand the defense's position.

4 ADC[CPT TOOMAN]: So with H and I, again, Your Honor, we don't
5 think either of these assist the Court in making any determination as
6 to the value. Again, PFC Manning is charged with stealing,
7 purloining or converting things worth more than a thousand dollars.
8 These definitions for which the government has requested judicial
9 notice don't assist you in assessing a dollar value to the
10 information. With respect to ----

11 MJ: Well, the government's relying on Specification 4 of Charge
12 II, and Specification 16 of Charge II for those -- for H and I.
13 Right?

14 ATC[CPT WHYTE]: It's Specification 4 of Charge III, Your
15 Honor.

16 MJ: Oh, I'm sorry. Specification 4 of Charge III and
17 Specification 16 of Charge II. So what is the defense position for
18 that it's not relevant to those specifications? I don't think
19 they're arguing that it's doing anything about value.

20 ADC[CPT TOOMAN]: Can I have a moment, Your Honor?

21 MJ: Yes.

22 [There was a brief pause while the assistant defense counsel
23 consulted with the civilian defense counsel.]

1 ADC[CPT TOOMAN]: Your Honor, Specification 16 does -- is a
2 641 offense.

3 MJ: It would be a thing of value, not the value itself. Is
4 that what you're arguing? It's not relevant to show that it's a
5 thing of value?

6 ADC[CPT TOOMAN]: Right. We don't think that it is. Again,
7 we think that that would call for the Court to make an inference from
8 the definition that it is a thing of value. It doesn't say an
9 information system is a thing of value. That's an inference.

10 MJ: Isn't that the purpose of relevant evidence, to have the
11 court draw inferences from the evidence?

12 ADC[CPT TOOMAN]: Yes. But here we don't think this is proper
13 for judicial notice because the definition doesn't help.

14 MJ: That's where I'm having trouble with your argument. The
15 judicial notice is basically this is what it is. It's an
16 adjudicative fact that AR 25-2 says X. What inferences the Court
17 draws from that depends on what other evidence is presented, how the
18 parties argue their case, *et cetera*. So I'm confused a little bit.
19 The judicial notice -- Is your argument to me that this evidence is
20 not relevant in any way coupled with other things for the government
21 to make an argument that the Court should draw whatever inference
22 it's trying to do with respect to those specifications?

1 ADC[CPT TOOMAN]: Certainly with regard to AR 25-1 we would
2 say PFC Manning is not charged with AR 25-1 and so nothing from AR
3 25-1 is relevant, and with respect to the definition from AR 25-2
4 which was originally offered to the Court under AR 25-1, those are
5 different definitions. So, we would ----

6 MJ: There's two different definitions. There's different
7 definitions of information systems in 25-1 and 25-2?

8 ADC[CPT TOOMAN]: Yes, ma'am. As well as in other Army AR 25-
9 400-2 has a definition that's different. So then we would say the
10 probative value, the Army doesn't seem to be able to get on the same
11 page as to what an information system is, and so we would then say
12 the probative value of this particular definition is not very high
13 for the Court.

14 MJ: All right. So when we recess the court, then the defense
15 will be getting me the definitions of information system in these
16 other various regulations.

17 ADC[CPT TOOMAN]: I believe you have 25-1, we'll be happy to
18 get you another copy, but that was the attachment to the original
19 government -- just so I make sure we get you the right thing.

20 MJ: That's all right. If I have it, I don't need another one.

21 ADC[CPT TOOMAN]: Okay.

22 MJ: Which enclosure is it, do you remember?

23 ATC[CPT WHYTE]: It's Enclosure 8, ma'am.

1 MJ: And where in Enclosure 8 does it define information systems
2 just so I can double-check it?

3 ATC[CPT WHYTE]: In Enclosure 8, ma'am, the definition of
4 information system is the last page of Enclosure 8m in the Glossary
5 section of that Reg.

6 ADC[CPT TOOMAN]: Which would be ----

7 MJ: Page what? I see. Okay.

8 ADC[CPT TOOMAN]: Ma'am, I can give you a copy of 25-1?

9 MJ: I have it.

10 ADC[CPT TOOMAN]: You have it. Okay.

11 MJ: All right. I see what you're talking about. But I would
12 appreciate the ----

13 ADC[CPT TOOMAN]: AR 25 ---

14 MJ: 25-400-2. I don't need the whole regulation. Just the
15 definition of ----

16 ADC[CPT TOOMAN]: Yes, ma'am. We'll just give you the
17 definition. Moving on to K and L, again, we don't believe the domain
18 of Iceland is relevant. It doesn't make anything more or less
19 likely.

20 MJ: Well, in the chat exhibit, it was what Prosecution Exhibit
21 30, I'm sorry, Prosecution Exhibit 123. If they actually used the
22 term .IS, wouldn't it be helpful for the Court to know what it was?

1 ADC[CPT TOOMAN]: If you tell us it is, Your Honor, then I
2 guess it would be. I think we would agree it is what it is, but we
3 don't think it makes a fact more likely than not.

4 MJ: Okay.

5 ADC[CPT TOOMAN]: I guess with respect to Specification 1 of
6 Charge III, which is, I believe what the government cited, it doesn't
7 -- the fact that that is ----

8 MJ: Well, as I understand what the government is offering these
9 things for is to explain to the Court when they look at the exhibit
10 what it is. Otherwise, how would the Court know?

11 ADC[CPT TOOMAN]: Sure. Understood, Your Honor.

12 MJ: Do you disagree with that, that that's not ----

13 ADC[CPT TOOMAN]: If that is what the government is offering
14 it for, then we would agree that it is, for the purpose of helping
15 the Court understand the chat, that IS means Iceland, we would agree
16 with that.

17 MJ: And the same thing for L, the four individuals?

18 ADC[CPT TOOMAN]: We don't -- We just don't believe -- That we
19 would say isn't relevant. Who these people are doesn't -- it just
20 isn't relevant to whether or not PFC Manning gave this information to
21 WikiLeaks.

22 MJ: Okay.

1 ADC[CPT TOOMAN]: We would say that's true for K as well,
2 ".is", but we would agree that it is the domain for Iceland. But it
3 doesn't make it any more or less likely that PFC Manning gave these
4 things to WikiLeaks or any other unauthorized person. It doesn't
5 make it any more or less likely that they have value. It doesn't
6 make any more or less to his state of mind or intent. Our position
7 is it's just not relevant.

8 MJ: Okay.

9 ADC[CPT TOOMAN]: And I believe we've already discussed M,
10 Your Honor.

11 MJ: All right. M we will probably have, should the government
12 get anything further to the Court, M will have to be further
13 addressed.

14 ADC[CPT TOOMAN]: Yes, ma'am.

15 MJ: All right. Thank you. Anything else from the government?

16 ATC[CPT WHYTE]: No, ma'am.

17 MJ: All right. Is there anything else we need to address today?

18 CDC[MR. COOMBS]: No, Your Honor.

19 TC[MAJ FEIN]: No, ma'am.

20 MJ: All right. The Court will take this issue under
21 advisement. The Court still understands we owe you or I owe you a
22 ruling on the other evidentiary issue that is outstanding and you'll
23 have that one as well. That was Prosecution Exhibits 31, 32, and

1 109, the admissibility of those. And if I'm correct we're going to
2 be proceeding with the taking of evidence tomorrow at 0930?

3 TC[MAJ FEIN]: Yes, ma'am.

4 CDC[MR. COOMBS]: Yes, Your Honor.

5 MJ: Court is in recess until tomorrow at 0930.

6 **[The court-martial recessed at 1258, 25 June 2013.]**

7 **[END OF PAGE]**

1 [The court-martial was called to order at 0809, 26 June 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties when the
5 Court last recessed are again present except Captain Whyte is absent
6 and Captain Overgaard is present. Also, Your Honor, as of start of
7 court this morning there are 11 members of the media at the media
8 operations center, there are two stenographers at the media
9 operations center. There are no media in the courtroom. There are
10 30 spectators in the courtroom and also there's approximately 20
11 spectators coming into the overflow trailer. Because the max of the
12 trailer is 35, the United States is preparing the theater in case
13 it's needed as the second overflow area for the general members of
14 the public.

15 MJ: All right. Thank you. Have the parties added anything to
16 the Appellate Exhibit List that we need to set forth for the record?
17 Major Fein, the Prosecution and Defense Exhibit List as well.

18 TC[MAJ FEIN]: Yes, ma'am. Your Honor, yesterday what's been
19 marked as Appellate Exhibit 579 are the Post-Trial and Appellate
20 Rights of the accused, dated 25 June 2013; and what's been marked as
21 Appellate Exhibit 581 is the Defense Witness List Order for the first
22 10 witnesses, dated 25 June 2013. And, ma'am, there are prosecution
23 exhibits but as we -- they are Stipulations of Expected testimony and

1 as we move forward the United States will offer those to account on
2 the record.

3 MJ: All right. And Mr. Coombs, I assume the Post-Trial and
4 Appellate Rights is just there to ensure that it's on the Appellate
5 Exhibit List. We'll go over that some other -- later on?

6 CDC[MR. COOMBS]: That is correct, Your Honor.

7 MJ: Okay. All right. Counsel and I met briefly for an R.C.M.
8 802 conference prior to coming on the record today. Once again
9 that's where I discuss logistics and scheduling issues and other
10 issues that might arise in the case. At that Article -- or R.C.M.
11 802 conference I asked the government if they intended to go forward
12 with Prosecution Exhibits 31 Alpha and 32 Alpha that they had
13 referenced when we were litigating the admissibility of Prosecution
14 Exhibits 31, 32, and 109 and the government advised me that they
15 would have an answer for the Court at the next -- after the next
16 recess. Is that correct?

17 TC[MAJ FEIN]: That's correct, Your Honor.

18 CDC[MR. COOMBS]: Yes, ma'am.

19 MJ: And the parties also advised me that they have reached
20 stipulations of expected testimony for two additional witnesses, but
21 they don't want me to go over the colloquy with PFC Manning until
22 after the next recess as well. Does either side desire to add
23 anything to what occurred during the R.C.M. 802 conference?

1 TC[MAJ FEIN]: No, ma'am.

2 CDC[MR. COOMBS]: No, Your Honor.

3 MJ: Is there anything else we need to address before the taking
4 of evidence?

5 CDC[MR. COOMBS]: No, Your Honor.

6 TC[MAJ FEIN]: No, Your Honor. May the government have a brief
7 moment?

8 MJ: Go ahead.

9 **[There was a brief pause while the trial counsel consulted with
10 assistant trial counsel.]**

11 TC[MAJ FEIN]: Yes, Your Honor, the United States is ready to
12 proceed. Although prior to this session the United States intended
13 to read a Stipulation of Expected Testimony for Miss Tasha Thian, we
14 will forego that right now in order to have the exhibits properly
15 brought out the classified exhibits and call our first witness.

16 MJ: All right. Proceed.

17 ATC[CPT OVERGAARD]: United States calls Mr. Charlie Wisecarver.
18 **CHARLIE WISECARVER, civilian, was called as a witness for the
19 prosecution, was sworn, and testified as follows:**

20 **DIRECT EXAMINATION**

21 **Questions by the assistant trial counsel [CPT OVERGAARD]:**

22 Q. And you are Mr. Charlie Wisecarver?

23 A. That's correct.

1 A. And do you work for the Department of State in Washington

2 D.C.?

3 A. I do.

4 Q. Can you tell us what you do for the Department of State?

5 A. Currently I'm in a position which is defined as when
6 actually employed I'm a consultant to the Department of State at this
7 point in time. I retired in -- at the end of April 2011, and so I
8 began consulting with them in September 11th, it's a program that
9 they have that allows retirees, retired Foreign Service Officers to
10 come back and work on a part-time basis and that's what I'm doing
11 now. And I'm consulting on security issues primarily, on the Federal
12 Information Security Management Act, Certification and Accreditation
13 Process of systems in infrastructure.

14 Q. And is that what you do -- That is what you do as a WAE?

15 A. Uh, huh, that's correct?

16 Q. Okay. And what position where you in at the Department
17 before you retired?

18 A. Just prior to my retirement I was the Principal Deputy
19 Chief Information Officer and Chief Technology Officer.

20 Q. And what does that mean?

21 A. In the Bureau of Information Resource Management, you have
22 the Chief, Information Officer. I was the number 2 person in the
23 Bureau. I had two other Deputy Chief Information Officers reporting

1 up through me to the CIO. I was responsible for all IT operations,
2 personnel, budget, basically everything that went on in the Bureau.

3 Q. And what's included in those IT operations?

4 A. All the -- Certainly the infrastructure, the World Wide
5 Network that we manage, 280 posts around the world and those
6 operations out to those. The messaging systems, the email systems,
7 payroll systems, any number of administrative computer types of
8 systems as well, and those types of operations.

9 Q. And how long were you in that position?

10 A. As a the Principal, I started that position in February of
11 2008, and then prior to that I was just simply the Deputy Chief
12 Information Officer and Chief Technology Officer from June 2006.

13 Q. And was that -- Did you have similar responsibilities in
14 that position?

15 A. I did, but I didn't have the oversight of the other two
16 Deputy CIOs at that point in time. But it was very -- Department of
17 State is a very collaborative agency so we typically work together at
18 that level -- at the higher levels of the Bureau.

19 Q. And then how about before that, what were you doing?

20 A. Prior to that I was the Program Manager for a new messaging
21 system, a modernization of the messaging system at the Department of
22 State, it's called SMART, State Messaging and Archive Retrieval

1 Toolset, and so that was to replace the legacy messaging systems. I
2 did that for 2 years.

3 Q. And then how about before that?

4 A. Prior to that I was the Director of the Messaging Systems
5 Office, so I started that job in December 2000, when I was promoted
6 to the Senior Foreign Service, and that was responsible for all
7 email, firewall, messaging systems, mobile access systems.

8 Q. When did you start at the Department?

9 A. I started at the Department, I was officially brought in as
10 a Foreign Service Specialist in September 1987.

11 Q. And what was your first assignment there?

12 A. My first assignment was actually in the Department working
13 on another messaging system that connected the Secretary's Office to
14 the rest of the Department. And then really my first true Foreign
15 Service assignment was in Mexico, I was the Information Systems
16 Manager in Mexico City responsible for the nine consulates that we
17 had at that point in time, IT operations.

18 Q. And are you familiar with Net-Centric Diplomacy?

19 A. I am.

20 Q. How are you familiar with Net-Centric Diplomacy?

21 A. Well, from the position that I had as the Deputy Chief
22 Information Officer/Chief Technology Officer it fell under my
23 purview, responsibility of the operations and maintenance of that

1 system. I was an occasional user. Primarily when someone would
2 complain or make some comment about the system, I would go out and
3 use it. I was not an avid user of the system, Net-Centric Diplomacy,
4 but I was very much aware of it. I had exercised the system on
5 occasionally.

6 Q. And you oversaw the system?

7 A. I was overall responsible for the smooth operation of the
8 system, and if it wasn't running well I heard the complaints.

9 Q. Can you tell us what NCD is, what Net-Centric Diplomacy is?

10 A. Net-Centric Diplomacy, it started off post 9/11. It was --
11 The original program name was under Horizontal Fusion which was a DoD
12 program. DoD provided some money to our intelligence and resource
13 program office at the Department of State to make information
14 available to the SIPRNET community. So the idea was that there's a
15 wealth of information that needed to be made available to those folks
16 on the ground, to the war fighters, and so that's what the program
17 started out as, information sharing across the community, both the
18 intel community and the Department of Defense community.

19 MJ: What was the name of that again?

20 WIT: Horizontal Fusion was the original banner that it -- the
21 moniker that it came under and that was in 2003.

22 Q. So the idea you said was to make information more readily
23 available?

1 A. Certainly. If you look at the legacy process of
2 distributing things, Department of State would have a telegram
3 drafted by a political officer, say, for example, in, pick a post,
4 Djibouti or wherever, they would draft that telegram, it would be
5 sent to the Department of State com center and then, depending on
6 distribution, they may say, okay, a copy of this should also go to
7 CENTCOM or other DoD elements or it might just stay within Department
8 of State. But the idea was it went to another com center, and the
9 distribution there was haphazard, in some cases; again you had the
10 folks on the ground in the field, kind of at the tip of the sphere
11 if you will, so the idea was to make this more broadly available,
12 information more broadly available to those folks.

13 Q. And when was NCD actually launched?

14 A. NCD would have been launched probably 2004 timeframe; it
15 became operational in its infancy.

16 Q. And when did you actually start to oversee NCD?

17 A. It would had been in 2009 as the Deputy Chief Information
18 Officer when IRM took over responsibility for it.

19 Q. And when did IRM take over responsibility?

20 A. It would have been late 2009.

21 Q. And you were the head of ----

22 A. Yeah, there was a negotiation process between the Bureau of
23 Resource Management the Intelligence and Resource Planning Office,

1 which had it originally, they gained the money from DoD, they brought
2 it up through its inception, they worked on the initial requirements,
3 and then we and my Bureau looked at it and said why are these folks
4 running a messaging program, so we negotiated at the Assistant
5 Secretary level that this program should come to the Bureau of
6 Resource Management -- to the Bureau of Information Resource
7 Management under my purview.

8 Q. So it went from RM to IRM?

9 A. That's correct.

10 Q. Okay.

11 A. Just added an extra letter.

12 Q. And then how about in 2010, who was responsible for the
13 maintenance of NCD, was that still you?

14 A. That was under my responsibility until the time I retired.

15 Q. And did you oversee the budget?

16 A. Yes, I did.

17 Q. Who was actually responsible for the day to day maintenance
18 of the system, of NCD, in late 2009?

19 A. Day to day it would have fallen to contractors with
20 government oversight.

21 Q. And how about 2010?

1 A. Same, it would have been contractors with government
2 oversight. In the Bureau of Information Resource Management we're 60
3 percent contractors and 40 percent FTE.

4 Q. And what contractors did you have working on NCD in late
5 2009?

6 A. It would have been CITI I believe was the contractor that
7 was working on that.

8 Q. What did they do?

9 A. They were primarily doing some program, we had some
10 programmer type folks, system administrator, database administrator
11 and some other low level. There were some training folks that were
12 involved. I don't know if they were still involved in 2009, but we
13 also had a kind of mini help desk at that point in time to answer
14 user queries.

15 Q. And how much did those contractors get paid in late 2009?

16 A. I think the budget at that point in time when IRM ----

17 CDC[MR. COOMBS]: Objection, Your Honor, at this point he
18 hasn't been qualified as an expert, but I would voir dire on that
19 expertise once the government has completed its foundation.

20 MJ: All right. Why don't you complete your foundation and I'll
21 allow the defense to voir dire and then we will continue?

22 Q. Did you oversee the budget in late 2009?

1 A. I was responsible for the complete IRM budget, certainly
2 the operations side, so any of the programs that fell under that,
3 yes.

4 Q. And you saw budget requests?

5 A. I saw budget requests and I saw the actual spend levels for
6 all of the programs that were under my purview.

7 Q. And you actually had to monitor those spend levels in 2010
8 as well?

9 A. Certainly as it got closer to the end of the fiscal year,
10 we would watch how my -- here is the budget allotment for this
11 particular project and here's how the spend is, and what's the spend
12 plan to make sure that the money is -- is appropriately used prior to
13 the end of the fiscal year.

14 Q. And do you know in late 2009 that you had programmers and
15 low level technicians like you said or a technician?

16 A. Yes. I mean you can't run a system without having that
17 level of assistance. You couldn't put a computer system out there, a
18 large database out there without having those types of personnel that
19 the -- the mechanics, if you will, for systems to manage and maintain
20 the system.

21 Q. And that was the same in 2010?

22 A. Yes.

1 Q. And would you have approved -- Well, would that have been a
2 line in the spend levels that you reviewed?

3 A. Yes. Under the Messaging Systems Office there would have
4 been a line item for Net-Centric Diplomacy.

5 Q. Which you approved?

6 A. Yes.

7 Q. And do you know how much, approximately how much those
8 programs -- those technicians made?

9 A. For the database ----

10 MJ: I'm going to allow ----

11 ATC[CPT OVERGAARD]: Sorry, it's just a yes or no question,
12 sorry, ma'am.

13 MJ: All right. Go ahead, you can answer that one.

14 Q. Repeat the question.

15 Q. I'm sorry. Do you know how much the help -- the mini help
16 desk that you talked about, do you know approximately how much the
17 contractors were paid that were part of that -- without giving a
18 number, just yes or no.

19 A. Yes.

20 ATC[CPT OVERGAARD]: We don't intend to qualify him as an expert,
21 ma'am, just a fact witness based on what he saw in the budget
22 requests.

1 MJ: All right. And, Defense, do you still want to voir dire if
2 they're not going to qualify him as an expert?

3 CDC[MR. COOMBS]: If they're not going to qualify him as an
4 expert, then more than likely I think it would be a hearsay objection
5 to the information.

6 ATC[CPT OVERGAARD]: He said he actually reviewed the budget
7 requests and the line items in the budget request, ma'am.

8 CDC[MR. COOMBS]: I could voir dire on this to show why it
9 would be hearsay.

10 MJ: You can have it on cross-examination. I don't agree that
11 it's hearsay. It's not a statement. Are you going to show him some
12 documents?

13 ATC[CPT OVERGAARD]: No, ma'am.

14 CDC[MR. COOMBS]: In this case, Your Honor, if the defense can
15 be heard.

16 MJ: Go ahead.

17 CDC[MR. COOMBS]: The position that Mr. Wisecarver occupied,
18 whatever information he would be seeing would be forms from
19 individuals that were several echelons below him, and they would
20 indicate the amount of money that they might need, sometimes
21 overestimate that, and so it would be statements from these
22 individuals saying here's how much money we need to do X, Y and Z.
23 And then it would be brought up to his level. He wasn't actively

1 looking at Net-Centric Diplomacy database saying this is how much
2 money we need, this is what we need to do. So in that regard it's a
3 statement by those individuals saying here's how much money we need
4 for X, how much money we need for Y.

5 MJ: All right. I'm going to overrule the objection and you can
6 cover that in cross-examination. Proceed.

7 **Questions continued by the assistant trial counsel [CPT OVERGAARD]:**

8 Q. So then who was working at the mini help desk that you were
9 talking about in late 2009, early 2010?

10 A. Who was in -- I do not know the individual's ----

11 Q. No, not their names, but just their positions, sir.

12 A. It would have been a low level technical type of position.

13 Q. And how much would that person get paid?

14 A. Typically that would be in the 65 -- \$65,000 to \$70,000,
15 range, somewhere in there.

16 Q. And at the -- You said you were monitoring the spend levels
17 at the end of 2010. Did you ensure that all that money was spent?

18 A. Uh-huh. That it had to be obligated, the money had to be
19 obligated by the end of the fiscal year.

20 Q. And when the money is obligated, then what follows?

21 A. Then it would be -- Then the contractor can invoice against
22 -- against that obligation document and it would be liquidated. For
23 all intents and purposes from my standpoint the money was spent.

1 Q. Okay. And was that over \$1,000.00 that was spent on your
2 budget?

3 A. For the Net-Centric Diplomacy program?

4 Q. Yes. In 2010.

5 A. Yes. It would have well exceeded that.

6 Q. Can you tell us what networks Net-Centric Diplomacy was
7 located on?

8 A. It was located on the SIPRNET network and on JWICS, the Top
9 Secret network, so the Secret High and the Top Secret network.

10 Q. And what types of information were on NCD?

11 A. It would be information that the drafting officers of those
12 messages had deemed appropriate for sharing outside Department of
13 State channels.

14 Q. So what are some examples of -- So, drafting messages, is
15 that what you said?

16 A. The drafting officer would make that determination for
17 something like that. So it might have been a meeting with the
18 foreign minister, for example, on some type of negotiation, some type
19 of treaty, various things. It could have been just biographical
20 sketches, here's the presidential race outside the United States, so
21 pick a country where there was actually some type of election going
22 on, here's the candidate and their stances on various issues.

1 Q. And did other government organizations and agencies use

2 NCD?

3 A. Primarily it was those who had access to SIPRNET. Of the
4 civilian agencies there were not that many that had access to
5 SIPRNET. It's primarily the Department of Defense and the Intel
6 community.

7 Q. How was NCD actually populated in the first part of -- in
8 the end of 2009, and the first part of 2010?

9 A. The message would come from the drafting officer, from the
10 post overseas into the Department of State com center, communications
11 center there. It would review those messages for the appropriate
12 caption and then it would be fed over to the NCD database ----

13 Q. And what was the ----

14 A. ---- all electronic.

15 Q. What was that, sir?

16 A. All electronic.

17 Q. And what was the appropriate caption?

18 A. SIPDIS. S-I-P, standing for SIPRNET, D-I-S standing for
19 distribution.

20 Q. And what is a caption?

21 A. Caption is a means of determining who should or perhaps
22 should not get a particular message. So captions could be -- We have
23 certain captions for State Department distribution only. We have

1 captions that might be medically privileged information, so that
2 would be actually restrictive, that other officers would not have
3 access to that information unless they were a medical officer. We
4 have other exclusive channels that -- for the Secretary's
5 communications.

6 Q. And you said SIPDIS was SIPRNET distribution?

7 A. Yes, that's correct.

8 Q. So what does that mean?

9 A. So it means that the drafting officers and the clearing and
10 approving officers overseas have looked at this and said this is of
11 general interest outside the Department of State. This is a general
12 interest that's appropriate for posting on to the SIPRNET NCD
13 database and JWICS.

14 Q. And just so we can understand how SIPDIS would actually
15 work, could you walk us through how a cable is actually drafted on
16 the screen and what fields they fill in?

17 A. Sure. So first field that you have to fill out is the
18 classification. Is it Unclassified, Confidential, Secret, or Top
19 Secret? And Top Secret, of course, is only on certain types of
20 messages. Until you put in the approving officer, you put in the
21 clearing officers, there will be a series of clearing officers as
22 well, folks who we view or made various changes to it or said, yes,
23 this is factual. Then it would be the drafting officer. Underneath

1 that you would have the tags which is -- are the terms and geographic
2 subjects information associated with it that was also used for
3 distribution purposes within the Department of State. And it might
4 distribute it -- it might differentiate between a political tag or an
5 administrative tag, for example. Then you would also have
6 declassification information if that was appropriate. There was the
7 executive order for classification line in there as well, the
8 subject, and then finally the text of the message, and then
9 ultimately it was signed by the Ambassador at that mission overseas
10 or by Sec State in the case of -- the Secretary of State in case of
11 outbound message from Washington. So they would draft that message,
12 they'd put all that information in there, it would go around for the
13 clearance process. This could take days, weeks or it might just be
14 done very quickly depending on the nature of the message, how
15 controversial it might be, so it goes through the clearance process.
16 And then finally all those changes -- all the clears were on there
17 and it goes to the approving officer who would say, yay, nay, and
18 then it would be transmitted from the com center back to the
19 Department of State.

20 Q. So the cable is marked SIPDIS on the fields and sent.
21 Where would it go?

1 A. SIPDIS would go to Department of State, that distribution
2 would be made in the Department of State, and additionally a feed
3 would be given over to Net-Centric Diplomacy.

4 Q. So it would feed into Net-Centric Diplomacy?

5 A. Uh-huh.

6 Q. And when was that SIPDIS caption created, do you remember?

7 A. That was created at the outset of the program. We had to
8 have a way of differentiating what would go off Department of State's
9 networks.

10 Q. Do you know why it was created?

11 A. Again, it was to -- it was so that the officers had a clear
12 understanding that this is a message that should be shared outside of
13 normal Department of State areas.

14 Q. Were there any other ways that cables were uploaded into
15 NCD?

16 A. There was a capability that if you -- if you were a user of
17 Intelink and you had a passport, which basically was a user ID and
18 password, then you could upload messages as well into NCD.

19 Q. So there could be cables in NCD that aren't SIPDIS?

20 A. That's correct.

21 Q. At the end of 2009 and the first part of 2010, how would a
22 user actually get to the NCD database if they were on SIPRNET?

23 A. They would go to the NCD website and that would be it.

1 Q. So how would they get there?

2 A. A lot of folks had a bookmark, they knew what the NCD
3 address was. I didn't particularly know what it was, but I could do
4 a search out there and find my way to it.

5 Q. So you could search on SIPRNET and find it?

6 A. Yes, you could search on NCD, uh-huh.

7 Q. Once someone got to NCD, if they wanted to find a specific
8 cable, for example, how could they have done that?

9 A. If they knew what the cable number was, they could actually
10 put that in in the search box, it's very similar to the way the
11 Internet works today as in Google or Bing or whatever your search
12 engine is, or you could search for a particular word, string, or
13 whatever else, you could search them that way.

14 Q. So if someone did a general search, what would it look like
15 when the results came back?

16 CDC[MR. COOMBS]: Objection, Your Honor. The testimony now is
17 going into the technical aspects of Net-Centric Diplomacy database.
18 It's beyond the level of 701 and we're going to be going into 702
19 now, especially if counsel is going to start asking questions about
20 how the Net-Centric Diplomacy database did or did not give access to
21 individuals.

22 MJ: Are you going to qualify this witness as an expert or not?

1 ATC[CPT OVERGAARD]: No, ma'am. We're just talking about his
2 firsthand knowledge of what NCD looked like, what you would do on
3 NCD, how a search result would come back, what you could do on NCD.

4 CDC[MR. COOMBS]: I believe, Your Honor, that the witness
5 testified that he rarely used Net-Centric Diplomacy Database,
6 occasionally he went on it. If they want to limit it to his
7 knowledge of the searches that he did, his firsthand experience,
8 fine. But counsel's not doing that, counsel is asking how
9 individuals would access Net-Centric Diplomacy Database, how they'd
10 do queries, how they'd do searches. That is the appropriate
11 testimony of an expert.

12 ATC[CPT OVERGAARD]: The witness stated, ma'am, that he used NCD,
13 he's aware of what it looked like, he didn't use it constantly, but
14 he used it, and every time there was problems he logged on ---

15 MJ: I think the defense objection is you're asking a general
16 question of how everyone else used it. If you don't want to qualify
17 this witness as an expert, then tailor your questions to his own
18 personal use.

19 ATC[CPT OVERGAARD]: Yes, ma'am.

20 **Questions continued by the assistant defense counsel [CPT OVERGAARD]:**

21 Q. So when you did a search on NCD, what would the results
22 look like when you got them back?

1 A. It would be the same as if I did a Google search on the
2 Internet. It would come back with those messages that met the
3 criteria of my search.

4 Q. So how would that appear, would it be just a list of?

5 A. It would have a list of messages, M-R-N, date, subject
6 line.

7 Q. And then how would you actually ----

8 MJ: What is an M-R-N?

9 WIT: I'm sorry. Message resource number. It's a unique
10 identifier. It's a combination of the originating post and date
11 time. Date time group I think is how it's used in the military, DTG.

12 Q. And if you wanted to open a cable, how would you do that?

13 A. You would just simply click on that link.

14 Q. Could you download a cable?

15 A. There was a feature to similar to -- I mean it's in the
16 Internet Explorer bar is to file, save, yes.

17 Q. How would you do that?

18 A. Go up to the file, go down to save from the browser.

19 Q. On the actual browser you would just go to the save as in
20 the drop down?

21 A. Uh-huh.

22 Q. Could you download multiple cables?

1 CDC[MR. COOMBS]: Objection, Your Honor. Again, now I'll
2 object to relevance and, again, what counsel is really doing is
3 trying to have this witness testify as to how the process of Net-
4 Centric Diplomacy Database worked.

5 MJ: And this witness uses the Net-Centric Diplomacy Database,
6 correct?

7 CDC[MR. COOMBS]: If I could voir dire in aid of my objection.

8 MJ: You can do it on cross-examination.

9 CDC[MR. COOMBS]: Then I would object then at this point to
10 relevance on what the counsel is asking.

11 MJ: Overruled. Proceed.

12 **Questions continued by the assistant trial counsel [CPT OVERGAARD]:**

13 Q. Were you able to download multiple cables at once from NCD
14 in late 2009, early 2010?

15 A. No. I'd only do one at a time. Same thing for printing.

16 Q. In your role as DCIO, did you also oversee the auditing
17 capabilities of Department of State programs, for those under IRM?

18 A. Yes, for any auditing that was being done, yes, I would
19 oversee that.

20 Q. What does that -- What did that include?

21 A. I mean it's the whole authentication process as you first
22 try to authenticate to the network, you log on to the network, you're
23 either accepted or rejected at that point in time.

1 Q. Okay. Did you ever see firewall logs or firewalls?

2 A. Firewalls, okay, different, yes, absolutely. Firewalls --
3 The firewall staff worked for me and so, yes, I saw firewall logs.
4 In fact, in my job as the Messaging Systems Office Director I spent
5 quite a bit of time. We had constant attempts to hack into our
6 network at the Department of State.

7 Q. Were you ever asked to collect firewall logs -- firewall
8 audit data for this case?

9 A. Yes.

10 Q. And what in general do those firewall logs show?

11 A. It was an IP address. It was the -- We were looking for
12 any hits to the NCD IP address, and then where those were actually
13 going to, the destination IP address.

14 Q. And do you remember when that was?

15 A. I don't remember the specific IP address, no.

16 Q. No. Do you remember the time?

17 A. Timeframe, that would have been October of 2010.
18 Diplomatic security actually requested that, law enforcement Army
19 Department of State Diplomatic Security asked me for that
20 information.

21 Q. Do you remember who in particular?

22 A. Ron Rock was the gentleman.

23 Q. And who pulled those logs for you?

1 A. Jerry Mundy burnt CDs of those logs for me.

2 Q. And he gave those CDs to you?

3 A. He gave the CDs to me.

4 Q. And who did you give those CDs to?

5 A. They went to my safe and then Ron Rock came and picked them

6 up.

7 Q. So they were secured while they were in your possession?

8 A. They were in my safe, yes.

9 Q. And you did not alter them in any way?

10 A. I did not alter them.

11 ATC[CPT OVERGAARD]: One moment, please.

12 **[There was a brief pause while the assistant trial counsel consulted**

13 **with trial counsel.]**

14 **Questions continued by the assistant trial counsel [CPT OVERGAARD]:**

15 Q. Was NCD available on any network besides SIPRNET and JWICS?

16 A. No. Not to my knowledge.

17 Q. There wasn't a non-classified NCD?

18 A. No.

19 ATC[CPT OVERGAARD]: Okay. Thank you.

20 MJ: Cross-examination?

21 CDC[MR. COOMBS]: Yes, Your Honor.

22

23

CROSS-EXAMINATION

Questions by the civilian defense counsel [MR. COOMBS]:

Q. Mr. Wisecarver, good morning.

A. Good morning.

Q. The NCD database was not developed at the Department of State, correct?

A. Yes, it was developed at the Department of State.

Q. Well, the Information Resource Management did not design or create the Net-Centric Diplomacy Database; that was contracted out?

A. It was contracted out, but it's still considered a government system.

Q. Right. So maybe it's just semantics. The database was designed and created by Creative Information Technology Incorporated (CITI)?

A. They were the contractor. They were the primary contractor.

Q. And they designed and created NCD, correct?

A. Based on specifications from Department of State, based on the task order, yes.

Q. All right. And CITI is a private company?

A. To the best of my knowledge, yes.

Q. And they were hired to develop and deploy the Net-Centric Diplomacy Database for the Department of State?

1 A. Uh-huh.

2 Q. In the 2006 timeframe you served as the Deputy Chief for IT
3 Operations and the Chief Technology Officer for Department of State.
4 Is that correct?

5 A. Deputy Chief Information Officer, I got that position in
6 June of 2006.

7 Q. And during that time you were not working with CITI on the
8 design specifications for the Net-Centric Diplomacy Database?

9 A. No, I was not.

10 Q. Instead, your focus obviously was on the overall
11 requirements of your office?

12 A. Uh-huh.

13 Q. Since you were not focused on the design specifications,
14 you did not contribute to the design scope of what the NCD database
15 would be. Is that correct?

16 A. That's correct.

17 Q. You did not contribute to CITI's logical design for the
18 Net-Centric Diplomacy Database?

19 A. I did not.

20 Q. And the logical design of the database would identify data
21 elements and enable users to either find data based upon some
22 designated key. Is that correct?

1 A. That's your definition -- yeah, I mean it's the user
2 specifications types of things. So they would take those user
3 requirements, the specifications provided by the Department of State
4 officers and program into that, yes.

5 Q. And you did not participate in CITI's technical
6 optimization of the NCD database as well?

7 A. I did not.

8 Q. And the technical optimization is the physical database
9 itself, physical database design. Is that correct?

10 A. Uh-huh. I did not participate in that design.

11 Q. Right. But I'm just asking the technical optimization,
12 that is the physical database design. Is that correct?

13 A. Again, that's a potential definition.

14 MJ: Do you know or not?

15 WIT: I'm not sure. I mean, the tech -- what's the -- repeat
16 that again then, please.

17 Q. Right. So when someone's designing a database, the
18 technical optimization of the database, that's the physical database
19 design?

20 A. Technical optimization, that's not how I would define ----

21 Q. How would you define?

22 A. ---- as the database default. Optimization is improving
23 performance, improving the throughput of the system. The design

1 would have already been done, the technical design, but how could we
2 improve it would be optimization in my mind.

3 Q. All right. Would you agree with me that the technical
4 optimization would control what functions a user could and could not
5 perform on the database?

6 A. No. That's not technical optimization in my mind at all.

7 Q. What is it in your mind?

8 A. Those types of things? Those are user requirements. Those
9 are basic requirements.

10 Q. All right. So basic requirements of the database would
11 control what a user could and could not do?

12 A. That's correct.

13 Q. And you did not participate in the design of that?

14 A. I didn't, that's correct.

15 Q. Is that right?

16 A. That's correct.

17 Q. Now, with regards to the costs.

18 MJ: Did you say it was a prosecution exhibit or a defense
19 exhibit?

20 CDC[MR. COOMBS]: I'm sorry.

21 Q. Mr. Wisecarver, I'm showing you what's been marked as
22 Defense Exhibit November for Identification. Can you tell me if you
23 recognize this?

1 A. Uh-huh. I do.

2 Q. And what is that?

3 A. It's a Foreign Affairs Manual for the Department of State.

4 Q. And what is the Foreign Affairs Manual?

5 A. It consists of regulations of Department of State. It

6 gives the organizational structure of the Department of State,

7 various policies and procedures.

8 Q. And that particular section of the Foreign Affairs Manual,

9 what does that cover?

10 A. This is the Bureau of that I was responsible for, the

11 Bureau of Information Resource Management.

12 CDC[MR. COOMBS]: Retrieving Defense Exhibit November from the

13 witness. Permission to publish, ma'am?

14 MJ: Go ahead.

15 **[There was a brief pause while the civilian defense counsel published**

16 **the exhibit to the Court.]**

17 Q. Mr. Wisecarver, I'm going to show you two pages from this.

18 It's basically Page 33, and that has a large print. All right. So

19 we will start with Page 33 and then we're going to carry over to 34,

20 okay? So 33 at the very bottom of that, what is that -- is that the

21 position that you were in at one point?

22 A. Deputy Chief Information Officer. This is somewhat dated,

23 I believe, but okay.

1 Q. And you can -- we're going to talk about some of the
2 information that you think might need to be corrected, okay?

3 A. Uh-huh.

4 Q. And then going here carrying over to 34?

5 MJ: Before we proceed, can I ask you something? You're
6 answering the questions uh-huh. That's very hard for the court
7 reporter. If you can answer them either yes or no.

8 WIT: I'm sorry. Be clear, yes, ma'am.

9 MJ: Thank you.

10 WIT: Yes, ma'am.

11 Q. All right. So then when we carry over to Page 34 and I
12 know there's a lot there, but would you agree with me that Page 34
13 kind of outlines the various requirements of your position?

14 A. That's the overall responsibilities of my positions, yes.

15 Q. And this is essentially just kind of a broad brush of
16 everything that you would be responsible for?

17 A. Yes, that's correct.

18 Q. And obviously right here, even though and we'll cover in a
19 moment how it kind of fell under your purview, this doesn't highlight
20 the Net-Centric Diplomacy Database or budgetary issues for that. Is
21 that correct?

22 A. That's correct. It doesn't call out any particular system.

1 Q. What I'd like to now show you is Page 78. All right. Now,
2 this is a little hard to see, but I'm going to zoom in. First of
3 all, have I shown this to you before?

4 A. Yes, you did.

5 Q. And can you tell Colonel Lind what this is?

6 A. This is the Bureau's organizational chart. It shows the
7 structure. It's dated 2008, but it was not current at that time.

8 Q. All right. And let's explain how it changed. So as this
9 is designed now, is this the current design?

10 A. Yeah. This is probably, I don't know all the details of
11 the various boxes, but this is probably closer to the organizational
12 chart today, yes.

13 Q. And then in the 2009/2010, timeframe when you were the
14 deputy CIO, how was this different?

15 A. What would have happened is off that Chief Information
16 Officer box there it came down to the Principal Deputy Chief
17 Information Officer which had been me, and then the two DCIO boxes or
18 the DCIO for business planning and customer assurance or service.
19 And then the Office of Information Assurance, Chief Information
20 Security Officer, would have reported up to me, through me to the
21 Chief Information Officer.

1 Q. All right. So when you were the Principal Deputy then, all
2 these boxes here below the CIO essentially would have fallen
3 underneath you?

4 A. That's correct.

5 Q. How many employees did you have essentially working for you
6 when you were the Principal Deputy?

7 A. Employees or overall? I mean look at the contract staff
8 and the employees, it was in excess of 1500.

9 Q. Okay. And so if we take out -- so 1500 people working for
10 you as the Principal Deputy?

11 A. Right. Right.

12 Q. And I imagine then when these individuals are working for
13 you, you have the general oversight of them, but you're not in the
14 day to day weeds of their particular job. Is that correct?

15 A. That would generally be correct. It would depend on the
16 type of the program. If it was a hot button type program, I probably
17 would be in the weeds on it. If it was a major failure, email wasn't
18 working, people couldn't access the Internet, yes, I would be looking
19 very closely scrutinizing what was going on.

20 Q. Now, with regards to the Net-Centric Diplomacy Database,
21 the information that you have regarding any sort of expenses for that
22 is based upon what others have briefed to you. Is that correct?

23 A. Or documents that were sent to me for approval.

1 Q. And those documents were documents that others prepared for
2 you?

3 A. Yes. They would be budget requests.

4 Q. And my understanding is essentially those budget requests
5 that were coming up to you, unfortunately this is kind of the way,
6 and you tell me if you agree, the way the government works, those
7 budget requests would be elevated somewhat. Is that correct?

8 A. It's not unusual for -- Again, you could do so much. So a
9 program office wants to do the best they can for their system, so
10 they'll shoot for the sky. They'll put in there as much as they can.
11 They want to build that perfect nirvana kind of system or whatever,
12 so, yes. Inflated, well, that's kind of derogatory in a sense,
13 that's a little bit negative, but it's not unusual for some padding
14 to take place in the budget request.

15 Q. And I guess the idea for padding is let's ask for more that
16 we might actually need and then it might get cut back and we'll be in
17 a position where we're okay.

18 A. That's true. But the padding had to be justified as well
19 in the narrative of the budget request.

20 Q. Now, with regard to the Net-Centric Diplomacy Database, you
21 indicated that in late 2009 the IRM started to take control of that.

22 A. Uh-huh.

1 Q. That's when you were basically in the conversation to take
2 control of it. The actual taking control of the Net-Centric
3 Diplomacy Database didn't take place until August of 2010. Is that
4 correct?

5 A. I don't know that fact. I believe -- I thought it was late
6 2009 that we took over responsibility for the program.

7 Q. Okay. So from your memory, you think it's late 2009?

8 A. Uh-huh. That's correct.

9 Q. Now, when you did take over the responsibility for it, you
10 weren't directly handling the budgetary issues for the Net-Centric
11 Diplomacy Database, you were relying upon others to do that for you?

12 A. As with all programs at Department of State.

13 Q. So any information that you had regarding funding for the
14 Net-Centric Diplomacy Database was based upon information from
15 others?

16 A. The budget request would come to me for approval.

17 Q. Right. So you ----

18 A. I didn't prepare the budget request if that's what you're
19 asking.

20 Q. Got it. Now, let's talk about the Net-Centric Diplomacy
21 Database. That was built with information sharing as a priority?

22 A. Correct.

1 Q. When the NCD Database was deployed on SIPRNET in late 2006,
2 there were no individual user level authentication or authorization
3 mechanisms in place?

4 A. Repeat that question. I'm not sure.

5 Q. Right. When the Net-Centric Diplomacy Database was put on
6 SIPRNET, made available on SIPRNET, the Department of State did not
7 have any individual user level authentication or authorization
8 mechanisms in place. Is that correct?

9 A. That's correct. Yes, it wasn't required to view or print
10 documents.

11 Q. Basically the State Department relied upon the end users of
12 the data, in this case the military, to guard against any abuse?

13 A. That's correct.

14 Q. The State Department's view on the Net-Centric Diplomacy
15 Database was that it was the responsibility of the receiving agencies
16 to insure that information was handled, stored and processed in
17 accordance with U.S. Government procedures?

18 A. Yes. And that was true with the legacy messaging systems
19 as well, it's just the same type of practice was carried over.

20 Q. And because it was the responsibility of the receiving
21 agency, the Net-Centric Diplomacy Database was not designed with
22 access controls as a priority?

1 A. I can't say that that was a priority or not a priority, it
2 just was not designed with that.

3 Q. Well, in fact, the way it was designed was the State
4 Department relied upon other agencies. If you gave somebody access
5 to SIPRNET, then you've done the vetting or whatnot to insure that
6 they had proper access. Is that correct?

7 A. Well, certainly for State Department users. I mean the
8 Secret clearance is required to have access to ClassNet in the
9 Department of State world or SIPRNET, so, yes, there was a certain
10 amount of vetting taking place and those types of things and we did
11 not put additional controls beyond that.

12 Q. Right. My question is limited just simply to the other
13 agencies.

14 A. Okay.

15 Q. So once the State Department put Net-Centric Diplomacy
16 Database on the SIPRNET, they relied upon other agencies to control
17 who would or would not have access to SIPRNET?

18 A. That's correct.

19 Q. And, likewise, they relied on other agencies to put any
20 access limitation or requirements to SIPRNET, you relied upon other
21 agencies to do that?

22 A. Right. But, again, understanding that NCD was a web-based
23 type of application, so I don't believe it was limited at all. If

1 you had access to SIPRNET, you had that Secret clearance, you were
2 given authorization to use SIPRNET, then by default you would have
3 access to NCD.

4 Q. And that's exactly what I was going to say. So once you --
5 Once the other government agency said you had access to SIPRNET and
6 approved of that, then there were no individual access restrictions
7 on Net-Centric Diplomacy Database?

8 A. As far as viewing and printing messages, no.

9 Q. Now, when you talked about your experience of using the
10 Net-Centric Diplomacy Database, you talked about, you know, I went
11 there, I clicked and I opened something and I printed it.

12 A. Uh-huh. That's correct.

13 Q. Did you actually ever do that?

14 A. Yes, I actually did.

15 Q. And ----

16 A. And the typical trick for something like that is I go out
17 and search for my own name, I do that, or also for other events if
18 there was a particular issue, so what's being reported on Iraq for
19 right now, for example.

20 Q. And so when you did that, could you open multiple -- once
21 you had Net-Centric Diplomacy Database opened, could you open
22 multiple Windows to have multiple cables up at one time?

1 A. Multiple Windows? I mean it's the same way if I open
2 something I believe today it would go down to the bottom ribbon bar
3 in the Internet Explorer.

4 Q. Sure. But like -- What I'm saying essentially, and we can
5 -- let's keep it within the Net-Centric Diplomacy Database and keep
6 it with your experience. If you opened up -- you got a query and
7 you have ten cables come up and you open up number one, could you
8 then minimize that or move it to the side and open up two as well to
9 see one and two?

10 A. Yes.

11 Q. And if you had multiple tabs open, could you then decide
12 which, if any, to print?

13 A. Yes.

14 Q. Or did you have to close them all down to print one?

15 A. No. You would go to that window and print from there.

16 Q. Now, with regards to the Net-Centric Diplomacy Database,
17 because it was available to anyone on the SIPRNET, did the State
18 Department put out any sort of information to other agencies saying
19 how you had to access it, any sort of restrictions on how you
20 accessed or ----

21 A. I'm not aware of any.

1 Q. If another agency permitted a user to access it in a
2 particular manner or particular number of cables, was that anything
3 that the State Department was monitoring or overseeing?

4 A. No.

5 Q. My understanding, and you tell me if you know this, each
6 cable on the Net-Centric Diplomacy Database had kind of a warning
7 banner. Are you aware of that?

8 A. I'm not surprised by that. I don't have really -- I don't
9 recall exactly what that warning banner would state, but that's
10 pretty standard procedure.

11 Q. All right. Just so I know the testimony, I'm not going to
12 ask you to tell me that verbatim. But are you aware whether or not a
13 cable had a warning banner on it?

14 A. I have been shown that they did have warning banners on
15 them, yes.

16 Q. And within that banner, do you recall whether or not any
17 said there was a particular restriction on the manner of downloading
18 the cables?

19 A. I'm not aware of that.

20 Q. Was anything in the banner that ever said that you were
21 limited in some way to just click, opening and saving?

22 A. No.

1 Q. All right. Was there anything in the banner that said that
2 you, a user, was restricted from automating the process of click,
3 open and saving?

4 A. No. It says it's for authorized purposes is typically what
5 the banner is saying on that case.

6 Q. So that kind of goes back to the idea of if you were
7 authorized to go there and you were doing it for some reason or
8 whatnot, then you were authorized to go on the Net-Centric Diplomacy
9 Database?

10 A. Uh-huh. Yes.

11 Q. And you can tell me if you're not aware of this and then I
12 won't ask any other questions on this part, but in September of 2012
13 the Office of Inspector General released a report on the Net-Centric
14 Diplomacy Database. Are you aware of that report?

15 A. Only since you showed it to me.

16 ATC[CPT OVERGAARD]: Objection, ma'am. Relevance.

17 MJ: I will give a little latitude here. Go ahead.

18 A. Only since you showed it to me this morning. No, I was not
19 aware of that report. That was after I retired.

20 Q. Okay. So are you aware of any sort of internal review by
21 the State Department as to the design flaws of the Net-Centric
22 Diplomacy Database?

23 A. I am not.

1 Q. Are you aware of any sort of corrective steps that the
2 State Department was or was not considering with regards to the Net-
3 Centric Diplomacy Database?

4 A. No, I do not know any specifics of that.

5 Q. With regards to the database, during your time was the Net-
6 Centric Diplomacy Database ever inaccessible to State Department
7 employees?

8 A. It possibly could have been for a network issue.

9 Q. Okay. But as far as actually having the Database taken
10 from you, was the Database ever removed from ---

11 A. Not to my knowledge.

12 Q. Okay. So, and I'm sorry, I just want to complete the
13 question.

14 A. Okay.

15 Q. But I know your answer. And I'm fine with your answer.
16 But was it ever removed from the Department of State's servers or
17 websites where you no longer had the Database on your servers?

18 ATC[CPT OVERGAARD]: Ma'am, I'd just ask for a time restriction
19 on this for relevance.

20 MJ: Overruled.

21 A. Again, please.

1 Q. Sure. So from your time when you were there, are you aware
2 of any time where the Net-Centric Diplomacy Database was removed from
3 the servers to where it was no longer accessible?

4 A. During my time there, no, that's correct.

5 Q. And when did your time end?

6 A. I retired in April of 2011, but I was on extended medical
7 leave from October through February.

8 Q. Of 2011?

9 A. Uh-huh. That's correct. October 2010 through.

10 Q. So basically your knowledge would go up to, what date would
11 you say?

12 A. Really when I left in October for my medical leave.

13 Q. Of 20?

14 A. 10.

15 Q. So up until October of 2010, to your knowledge, the Net-
16 Centric Diplomacy Database was never removed from the servers?

17 A. That's correct, it was never removed from the Department of
18 State access.

19 Q. You talked a little bit about cables and I'd like to ask
20 you some more information about SIPDIS cables, okay?

21 A. Uh-huh. Yes.

22 Q. And if there's anything you don't know, just let me know
23 and we'll go over that. With regards to uploading cables, I think

1 you said that SIPDIS cables would go in once they were reviewed into
2 the Net-Centric Diplomacy Database. Is that right?

3 A. Uh-huh. That's correct.

4 Q. And then certain users had the ability if they had a
5 particular account to actually upload cables into SIPDIS as well?

6 A. That's correct.

7 Q. Could you tell us a little bit more about that second part?
8 Like who are the -- who would have that type of account?

9 A. Anyone with Intellipedia type of users would have had that
10 type of account.

11 Q. And when they uploaded something to the Net-Centric
12 Diplomacy Database, was there any sort of review to avoid spillage?

13 A. I don't know.

14 Q. When they uploaded that, was there any sort of guidance put
15 out that only those cables that would qualify for SIPDIS should be
16 uploaded to the Net-Centric Diplomacy Database?

17 A. Overt guidance to that effect, I don't know that that would
18 have been done necessarily as well. I mean it was -- The NCD had its
19 disclaimers associated with it, so I couldn't say. I never did an
20 upload of a document, so I really couldn't speak too much to this
21 aspect.

22 Q. Okay. So my understanding then from your testimony though
23 when like some posts would put a caption SIPDIS ----

1 A. Yes.

2 Q. ---- it would come into the State Department and get a
3 review basically to make sure there's no spillage issues?

4 A. There was a system review that would look for that, yes.

5 Q. And then also to remove any PII information, personal
6 identifying information?

7 A. It was identified and put off to its own queue.

8 Q. And then it would go into SIPRNET after that review?

9 A. That's correct.

10 Q. So if that were the process, do you know if -- if I'm a
11 person who's got Intellipedia and I'm uploading a cable to the Net-
12 Centric Diplomacy Database, is there anything on this side that would
13 do a review?

14 A. I don't know.

15 Q. Okay. So that could happen and you just wouldn't know?

16 A. That's correct.

17 Q. Now, with regards to SIPDIS, my understanding of that term,
18 and tell me if you agree, is SIPRNET distribution would mean that
19 this is the type of information that's appropriate to share with
20 anybody who would have access to the SIPRNET?

21 A. That's correct.

1 Q. And the majority of these cables then, the idea would be
2 anyone -- well, actually before I ask that. Do you know how many
3 people had access to SIPRNET?

4 A. I don't know, no.

5 Q. In your mind is that a very few people or quite a bit?

6 A. That's relative to what, you know, it's a lot compared to
7 Department of State users because we only had approximately 20,000
8 users in the Department of State with access to ClassNet and SIPRNET.
9 So it was some number in excess of that.

10 Q. All right. So then when somebody from the Department of
11 State was putting a SIPDIS cable on the Net-Centric Diplomacy
12 Database, I imagine there was guidance put out what that meant, that
13 SIPDIS caption?

14 A. Multiple times we sent telegrams to the field to drafting
15 officers specifying this is appropriate for SIPDIS dissemination,
16 this is not appropriate.

17 Q. So knowing that it's going to go to an audience that's in
18 excess at least of what the State Department's audience would be of
19 20,000, you would agree with me that the type of information that's
20 put in there shouldn't be our nation's most closely held secrets?

21 A. I don't know if that's necessarily the case. I mean,
22 again, it's ----

1 Q. Well it shouldn't be any Top Secret information, would you
2 agree with that?

3 A. No. Because it's on the Secret high network.

4 Q. Exactly. And are you aware of other more sensitive tags
5 such as StateDis, NoDis, ExDis?

6 A. Yeah, StateDis I believe is obsolete at this point. NoDis
7 is no distribution, basically they didn't want an electronic
8 distribution of that although later on it was allowed. Any number of
9 captions, ExDis was another one as well, executive distribution.

10 Q. Let's go through each one of these just ----

11 A. Okay.

12 Q. ---- one by one for a moment. What does NoDis stand for?

13 A. No distribution.

14 Q. And my understanding is this captioning is for the messages
15 of the highest sensitivity between either the President, Secretary of
16 State ----

17 A. Or it might be that we are sending something embarrassing
18 about the Department of Defense, something that should not be shared.

19 Q. And ExDis, what does that stand for?

20 A. Executive distribution, so that would typically be
21 conversations between Secretary of State and his or her Ambassadors.

22 Q. And what about?

1 A. StateDis was State distribution only when that was still in
2 use.

3 Q. And how about Roger, are you familiar with that?

4 A. Roger is Intelligence distribution.

5 Q. And TerRep, are you familiar that one?

6 A. TerRep, it's terrorist type of information reporting,
7 terrorist reporting.

8 Q. And you would agree with me each of those captions makes it
9 a much more restrictive audience that can see the cable?

10 A. Yes. I mean that's the purpose of those captions on there.

11 Q. If you had a cable that had SIPDIS without any other more
12 restrictive caption, it would not be put on the Net-Centric Diplomacy
13 Database?

14 A. It should not be put on the Net-Centric Diplomacy Database,
15 yes. Certainly in the case of ExDis and NoDis. I'm not sure about
16 TerRep. I'm not sure that that wouldn't be put out into Net-Centric
17 Diplomacy Database. Roger channel would not be placed out there as
18 well. TerRep I'm not sure of.

19 Q. Now, with regards to cables, and you can tell me if you
20 don't know this, I just want to get an idea of how many cables we're
21 talking about that might get to SIPDIS. Do you know how many cables
22 roughly in a year the State Department would do?

1 A. At the time when I was running the message and systems
2 office I tracked it very closely and at that time when I left there
3 in 2004/2005 timeframe, we were doing around 300,000 messages a year.

4 Q. Okay. So 300,000 a year of just cables. Is that correct?

5 A. That's correct.

6 Q. And would you agree with me that roughly about 75 percent
7 of those were just administrative in nature?

8 A. That's the number that we used, yes, 75 percent were
9 administrative.

10 Q. Do you have an idea of how many cables per year once we
11 have the SIPDIS caption roughly were being created?

12 A. No, I do not know that number. I would have had access to
13 that number at one point, but I don't recall what that number was.

14 Q. But whatever number that would be, that would be the
15 percentage I guess of the 300,000 cables?

16 A. Uh-huh.

17 CDC[MR. COOMBS]: Mr. Wisecarver, thank you. I don't have any
18 further questions for you.

19 MJ: Redirect.

20 ATC[CPT OVERGAARD]: Yes, ma'am.

21 [END OF PAGE

22

1 Q. And that -- Does that date back to when telegrams were
2 first started?

3 A. Yeah. Telegrams go back a long ways, so potentially if
4 someone had one of these old telegrams in their filing cabinet, it
5 could have been scanned.

6 Q. And how far back, do you know, does that go?

7 A. Telegrams go back to World War II timeframe and probably
8 even -- I mean there's the old cable system that goes back, this is
9 based on Telex type of technology, so this goes back to the turn of
10 century.

11 Q. Okay. You also mentioned that there was -- on cross that
12 there was a -- there's a process to remove PII.

13 A. Uh-huh.

14 Q. What was that process?

15 A. Going through and doing searches for strings like a Social
16 Security Numbers three digits hyphen two digits and then three
17 digits. So looking for certain types of strings, characters, and
18 then those would be identified and then purged if they were deemed to
19 be privacy related information. Same thing with credit card numbers
20 as well.

21 Q. Was it automated or did a person go through and look?

22 A. No. It had to be manually.

23 Q. Okay.

1 A. It was a manual search.

2 Q. And do you know was PII always removed?

3 A. Every attempt was made to remove it.

4 Q. So every attempt was made. You also mentioned on cross
5 that Department of State relied on other agencies to monitor their
6 use of NCD. What -- Why were there no technical restrictions put in
7 place on NCD?

8 MJ: Yes?

9 CDC[MR. COOMBS]: I'm going to object again. I think at this
10 point the witness has already established that he had no design
11 knowledge of NCD and that this would again require the witness to be
12 an expert to talk about ----

13 MJ: What was your question?

14 ATC[CPT OVERGAARD]: If he knows, based on what was listed on
15 cross about Department of State relying on other agencies to monitor,
16 why there was no technical restrictions?

17 MJ: Do you know the answer to that?

18 WIT: It would inhibit the sharing of information, be
19 administratively difficult to manage if not impossible.

20 MJ: I'm going to overrule that, go ahead.

21

22

23

1 **Questions by the assistant trial counsel [CPT OVERGAARD]:**

2 Q. Did you know in your use of NCD, was there a mechanism that
3 digitally allowed users to download or print multiple cables at a
4 time?

5 A. I'm not aware of any such capability or function.

6 ATC[CPT OVERGAARD]: One moment, please.

7 Q. Did PII include names?

8 A. No. Well, it would include -- names would be a part of it.
9 Name, associated with a Social Security Number and date of birth.

10 Q. And was that process 100 percent?

11 A. It's highly doubtful.

12 ATC[CPT OVERGAARD]: All right. Thank you, sir.

13 MJ: All right. Anything final on the other side?

14 CDC[MR. COOMBS]: Nothing, Your Honor.

15 MJ: I have a couple of questions for you.

16 **EXAMINATION BY THE COURT-MARTIAL**

17 **Questions by the military judge:**

18 Q. Based on that last question, in these cables that were
19 reviewed to go on NCD, were the names purged or not?

20 A. No, ma'am, names were not purged.

21 Q. You testified earlier that there were cables that went out
22 to the Bureaus in the field on what should or shouldn't be, I guess

1 with criteria on what should or shouldn't be on NCD. What were the
2 criteria that were put out?

3 A. Information that should be broadly shared, information for
4 the war fighter, information of interest. As long as it didn't
5 violate privacy guidelines.

6 MJ: Any follow-up based on that?

7 ATC[CPT OVERGAARD]: No, ma'am.

8 CDC[MR. COOMBS]: No, Your Honor.

9 MJ: Temporary over permanent excusal?

10 ATC[CPT OVERGAARD]: Temporary, ma'am.

11 MJ: All right.

12 **[The witness was temporarily excused, duly warned, and withdrew from**
13 **the courtroom.]**

14 TC[MAJ FEIN]:Ma'am, the United States offers to read Miss
15 Thian's Stipulation into evidence.

16 MJ: Proceed.

17 TC[MAJ FEIN]: Ma'am, this is Prosecution Exhibit 150.
18 Stipulation of Expected Testimony for Miss Tasha Thian, dated 16 June
19 2013.

20 It is hereby agreed by the Accused, Defense Counsel, and
21 Trial Counsel, that if Ms. Tasha M. Thian were present to testify
22 during the merits and pre-sentencing phases of this court-martial,
23 she would testify substantially as follows:

1 I am the Agency Records Officer, Office of Information
2 Programs and Services, U.S. Department of State. In this position, I
3 set policy and procedures for the management of records within the
4 Department. I am the Department Official responsible for the
5 Department of State records. I am the head of a division of 25
6 employees. The duties of these employees include records analysis,
7 website management, records scheduling activities, and records
8 review. I am a certified records manager with 31 years of service
9 with the Federal Government. I am responsible for the Foreign
10 Affairs Manual and Handbook sections on records management. I have
11 been the Agency Records Officer since August 2007.

12 A cable is an official message of the Department of State.
13 Cables can be sent between posts or between posts and State
14 Department Headquarters. When a cable is sent, a record copy of the
15 cable is automatically captured in the State Archiving System (SAS).
16 The SAS contains classified cables at the Secret level and below
17 since 1973. There are approximately 400,000 new Department of --
18 Department cables stored in the SAS annually.

19 Cables are identified by the Message Record Number (MRN)
20 assigned to each cable. An MRN has three parts. The first part of
21 the MRN is the two-digit year the cable was created. The second part
22 is the name of the post that created the cable. The third part is

1 the sequence number of the cable. For example, 05Algiers1836 would
2 be the 1,836th cable sent by Embassy Algiers in 2005.

3 I reviewed and printed directly from the SAS the cables
4 Bates numbers: 00505328 through 00505808 listed in Prosecution
5 Exhibit 151 for Identification. On 6 December 2012, I also attested
6 to the authenticity of these cables in a document with the Bates
7 numbers: 00527342 through 00527346. This authentication memorandum
8 was written on Department of State letterhead and accompanied by the
9 Department seal and the Secretary's signature verifying my authority.
10 With this memorandum, I attested that each of the listed records was
11 made at or near the time of the occurrences of the matters set forth
12 therein. Each record was made by, or from information transmitted
13 by, people with knowledge of those matters. The records were kept in
14 the course of the Department's regularly conducted business
15 activities, and it was the regular practice of such business
16 activities to make these records. I also celiified that the records
17 listed in PE 151 for Identification are true copies of the original
18 records contained within the files of the Department of State.

19 PE 98 for Identification contains the Net-Centric Diplomacy
20 version of the above referenced cables and the same cables in
21 Appellate Exhibit 501. The formatting of the cables listed in PE 98
22 for ID and AE 501 is different than the cables in SAS, but the text
23 and content are the same.

1 Your Honor, the United States moves to admit Prosecution
2 Exhibits 98 and 151 for Identification as Prosecution Exhibits 98 and
3 151.

4 CDC[MR. COOMBS]: No objection, ma'am.

5 MJ: All right. May I see them? Prosecution Exhibit 151 for
6 Identification is admitted. Prosecution Exhibit 98 for
7 Identification is admitted. Proceed.

8 TC[MAJ FEIN]: Ma'am, at this point the United States requests a
9 20-minute recess for a comfort break and to finalize any stipulations
10 for the day.

11 MJ: All right. And you also have my answer to the question
12 that I asked earlier.

13 TC[MAJ FEIN]: Yes, ma'am, I will.

14 MJ: Anything else we need to cover before we recess?

15 CDC[MR. COOMBS]: No, Your Honor.

16 MJ: Court's in recess until 10 after 11.

17 **[The court-martial recessed at 1057, 26 June 2013.]**

18 **[The court-martial was called to order at 1136, 26 June 2013.]**

19 MJ: Court is called to order. Let the record reflect that all
20 parties present when the Court last recessed are again present in
21 Court. All right. Does the government have an answer to my
22 question?

1 ATC[CPT MORROW]: Yes, Your Honor. The two Tweets have been
2 marked as Prosecution Exhibits 31 Alpha and 32 Alpha for
3 Identification and we'd offer those into evidence, subject to your
4 ruling on the evidence.

5 MJ: All right. Any objection from the defense?

6 ADC[CPT TOOMAN]: The same objection that we've discussed at
7 length, Your Honor.

8 MJ: All right. Captain Morrow, has Special Agent Mander
9 testified that the Prosecution Exhibits 31 Alpha and 32 Alpha are the
10 screen images of the images that he pulled from the Twitter account?

11 ATC[CPT MORROW]: We believe he has, Your Honor. We believe
12 he testified ----

13 MJ: He testified that he saw them. He didn't testify that ----

14 ATC[CPT MORROW]: That he saw them about a year ago, that he
15 had printed them, but I'd have to go back and look at the transcript.

16 MJ: Did he ever connect Prosecution Exhibit 31 for
17 Identification, Alpha, and 32 Alpha?

18 ATC[CPT MORROW]: No, he has not made that connection. We can
19 recall him for that purpose.

20 MJ: All right. When did you plan to do that?

21 ATC[CPT MORROW]: Tomorrow, Your Honor. Tomorrow morning.

22 MJ: All right.

1 TC[MAJ FEIN]: Ma'am, also for the record reflect the accused
2 and Major Hurley are currently located in the panel box to review
3 classified material.

4 MJ: Okay. All right. We have two Stipulations of Expected
5 testimony at issue?

6 TC[MAJ FEIN]: Yes, ma'am. What's been marked as Prosecution
7 Exhibits 162 Alpha and Bravo for Identification, and Prosecution
8 Exhibits 163 Alpha and Bravo for Identification. Alpha are the
9 redacted versions and bravo are the original classified versions.

10 MJ: All right. May I see them, please? All right. PFC
11 Manning, we've gone through this inquiry a few times with respect to
12 other stipulations of expected testimony. I have before me
13 Prosecution Exhibit 162 Alpha which is the Stipulation of Expected
14 Testimony for Mr. Albert Janek, and 162 for -- Prosecution Exhibit
15 162 Bravo for Identification which is the classified version of that
16 exhibit. And I also have Prosecution Exhibit 163 for Identification,
17 the Stipulation of Expected Testimony of Mr. Gerald Mundy, and
18 Prosecution Exhibit 163 B which is the classified version of that
19 stipulation of expected testimony. Do you have a copy of both the
20 classified and redacted versions of Prosecution Exhibits 162 and 163?

21 ACC: Yes, Your Honor.

22 MJ: Did you sign those stipulations of expected testimony?

23 ACC: Yes, Your Honor, I did.

1 MJ: Before signing them, did you read them thoroughly?

2 ACC: Yes, ma'am.

3 MJ: Do you understand the contents of the stipulations?

4 ACC: Yes, ma'am.

5 MJ: Did your defense counsel explain the stipulations to you?

6 ACC: Yes, ma'am.

7 MJ: Do you understand you have an absolute right to refuse to

8 stipulate to the contents of either of these documents?

9 ACC: Yes, ma'am.

10 MJ: Now, you should enter into a stipulation only if you

11 believe it's in your best interest to do that, do you understand

12 that?

13 ACC: Yes, ma'am.

14 MJ: Now, once again, this is a stipulation of expected

15 testimony, and what that is is when counsel for both sides and you

16 agree to a stipulation of expected testimony, you are agreeing that

17 for Prosecution Exhibit 162 Alpha and Bravo, if Mr. Albert Janek were

18 here testifying in court, and for Prosecution Exhibit 163 Alpha and

19 Bravo, if Mr. Gerald Mundy were here testifying in court, you're

20 agreeing that this stipulation of expected testimony is what each of

21 these witnesses would say.

22 ACC: Yes, Your Honor.

1 MJ: The stipulation does not admit to the truth of the person's
2 testimony, the stipulation can be contradicted, attacked or explained
3 in the same way as if the person who was testifying here in court on
4 the witness stand. Now knowing what I -- Do you understand all that?

5 ACC: Yes, Your Honor.

6 MJ: Now, knowing what I've told you and what your defense
7 counsel has told you about these stipulations, do you still desire to
8 enter into them?

9 ACC: Yes, ma'am.

10 MJ: Do counsel concur?

11 ADC[MAJ HURLEY]: Yes, ma'am.

12 TC[MAJ FEIN]: Yes, ma'am.

13 MJ: All right. Prosecution Exhibits 162 Alpha and 162 Bravo,
14 and 163 Alpha and 163 Bravo are admitted. All right. Do we have
15 someone available to retrieve the classified portions?

16 TC[MAJ FEIN]: Ma'am, at this point they can be left there if
17 the accused and Major Hurley can go back to their desk and they'll be
18 monitored until we recess.

19 MJ: All right. PFC Manning and Major Hurley, why don't you
20 return to the defense table? Is the government ready to proceed?

21 TC[MAJ FEIN]: Yes, ma'am. There's also one other correction
22 that's been made by the parties, Your Honor, on a Stipulation of

1 Expected Testimony, this is Prosecution Exhibit 149. Stipulation of
2 Expected Testimony from Mr. James Downey dated 17 June 2013.

3 MJ: May I see it, please?

4 TC[MAJ FEIN]: Yes, Your Honor.

5 MJ: All right. Please describe the change.

6 TC[MAJ FEIN]: Yes, ma'am. On Page 3, Your Honor, the top right
7 where the Prosecution Exhibit PE number was originally inked in, it
8 was 152. It has been changed to PE 164 for Identification.

9 MJ: All right. And I see three sets of initials next to it.
10 Are those the initials of counsel and PFC Manning?

11 ADC[MAJ HURLEY]: Yes, ma'am.

12 MJ: So you concur with the change?

13 ADC[MAJ HURLEY]: Yes, ma'am.

14 MJ: And you do as well?

15 ACC: Yes, Your Honor.

16 MJ: All right. Is there anything else we need to address
17 before we proceed?

18 TC[MAJ FEIN]: No, ma'am.

19 MJ: Has that Stipulation of Expected Testimony been read in the
20 record already?

21 TC[MAJ FEIN]: It has not, Your Honor, it will be this morning.
22 Your Honor, the United States offers to be read into the record the

1 Stipulation of Expected Testimony of Mr. Albert Janek, Prosecution
2 Exhibit 162 Alpha.

3 It is hereby agreed by the Accused, Defense Counsel, and
4 Trial Counsel, that if Mr. Albert Janek were present to testified
5 during the merits and pre-sentencing phases of this court-martial, he
6 would testify substantially as follows:

7 I currently work for the Department of State, Under
8 Secretary of Management, Office for Policy, Right-Sizing and
9 Innovation, as the Direct of Continuity at the United States Embassy
10 in Kabul, Afghanistan. In this capacity, I manage the containment
11 and movement of information at our office in Kabul. I have worked at
12 the Department of State for 11 years in various Information
13 Technology (IT) positions. Before joining Department of State, I
14 worked in IT for 5 years for businesses and a university. I possess
15 numerous certifications, including CISSP, CAP, MCSE, Security Plus, A
16 Plus, and Net Plus. I was also a Microsoft Certified Trainer.

17 From 2009 to 2012, I was a Special Projects Manager within
18 the Messaging Systems Products, Messaging Systems Office in the
19 Bureau of Information Research Management, at the Department of
20 State. In this Capacity, I was responsible for the management of
21 certain Department of State Messaging Systems, including Net-Centric
22 Diplomacy server logs. The NCD server logs track the Internet
23 Protocol (IP) addresses of a user requesting our resources, as well

1 as the time and date that request was made, whether the user
2 retrieved the resource or not, and the metadata associated with that
3 connection. Metadata is data about data. Structural metadata
4 provides information about the design of data structures. It is
5 essential data about how the data itself is contained. Descriptive
6 metadata is data that provides information about the application of
7 data, or the data content. Accordingly, these server logs describe
8 the connection between two systems on the SIPRNET.

9 A log is created any time a Hypertext Transfer Protocol
10 (HTTP) talks via the Transmission Control Protocol (TCP) and
11 successfully receives information. HTTP is the foundation of data
12 communication for the World Wide Web. It consists of packets of
13 data, which, when connected wirelessly or via Ethernet cable, creates
14 a network for communication. TCP provides reliable, ordered, error-
15 checked delivery of a stream of data between programs running on
16 computers connected to the Internet. Simply put, if TCP is a
17 highway, HTTP constitutes the lanes on the highway. The server logs
18 track the data entering and exiting a server which exists on a
19 classified network platform between the Department of Defense's
20 SIPRNET and the State Department's CLASSNET. Specifically, the NCD
21 Server is located in what is commonly known as the "DMZ" between
22 SIPRNET and the Department of State CLASSNET. Department of State
23 CLASSNET is the Department's own version of SIPRNET, a classified

1 network that is accredited to hold Secret information and data. I am
2 aware that the State Department has a "captioning" system for cables.
3 Captions limit the distribution of cables. A cable could be
4 captioned "STADIS" for distribution to only State Department
5 personnel. It could be captioned "NODIS" for distribution only to
6 the intended receipt. During the time I worked there, a cable could
7 also be captioned "SIPDIS" for distribution on the SIPRNET.

8 I know that the logs -- that these logs are accurate
9 because only three individuals, including myself, had access to them.
10 To alter the data, an individual would have to hack into the server
11 operating system to manipulate the logs. The logs are reviewed about
12 once a quarter, typically to see the number of organizations that are
13 using our products. A log is only created upon a successful request
14 sent to the server. If there is an error, such as "Page Not
15 Available," the log is not created.

16 I first became involved in this case when Special Agent
17 Ellis and Special Agent Bowen of the U.S. Army Criminal Investigation
18 Command (CID) requested that I assist them in the collection of
19 evidence from the server logs of our Net-Centric Diplomacy Database.
20 On 15 June 2012, I assisted them in getting access to the information
21 by escorting the agents to necessary log-in terminal in the
22 Department of State Server Room and logging them into the system
23 using my special permissions. I oversaw the agents as they copied

1 the Department of State server logs from January 2009 to June 2009,
2 and from 30 April 2012 to 15 June 2012. Agent Ellis used a forensic
3 tool to pull and compress all the logs into .zip files. The CID
4 agents saved the logs as "log.zip" and "newlogs.zip" on a
5 forensically wiped thumb drive. The thumb drive was marked Secret.
6 I signed the thumb drive over to SA Ellis on a U.S. Department of
7 State Bureau of Diplomatic Security Evidence Receipt/Chain of Custody
8 (Cyber Security Incident Program) form. On that form, I recorded the
9 thumb drive of the files as "files, ZIP, containing logs, filename
10 logs.zip and newlogs.zip, in the root of D:\, hashed before
11 acquisition and hashed copies, 1232, 15 June 2012, KNE." The data in
12 these files displays as text. Prosecution Exhibit 97 for
13 Identification is a copy of these logs.

14 If you look at what has been marked as PE 97 for
15 Identification, you can tell the source IP address, the date/time
16 group that the server responded to that source IP's request of the
17 system, what the IP address was requesting, information from the CPU
18 of the source IP address, the protocol, and the search engine and
19 browser used by the source IP address.

20 Below is an explanation of the HTTP logs by column and
21 using a specific line pulled from acces_log.2010-05-04.

1 The entry "22.225.41.22" is the source IP address. This
2 address indicates the IP address of the computer where a user is
3 requesting the information.

4 The entry 04/May/2012:04:34+0000 is the time and date
5 group, which is given in Zulu Time. The time and date group records
6 when the computer processes the request from the sending IP address.

7 HTTP/1.1 is the protocol, which is discussed above.

8 The entry 200 is a code that states that the user's request
9 to GET and access the document was successful.

10 The entry 98796 is a code about the system that the user is
11 connecting from.

12 The entry %20 means that a space exists in the log.

13 The entry Mozilla/5.0 tells me that the user of the
14 22.225.41.22 IP address was using Version 5 of the Mozilla browser.

15 The entry Windows; U; Windows NT 5.1; en-US; rv; 1.9.1.6
16 means that a Windows NT workstation was being used by the user of the
17 22.225.41.22 computer.

18 The entry Gecko/20091201 Firefox/3.5.6 tells me that the
19 22.225.41.22 system was using the Firefox browser.

20 I worked on the NCD Database for approximately a year. To
21 my knowledge, the NCD Database operated in its designed manner for
22 the entire period. In the 2009 through 2010 timeframe, to my

1 knowledge, there was never any directive for Department of State
2 employees to refrain from using the NCD Database.

3 Your Honor, the United States moves to admit what has been
4 marked as Prosecution Exhibit 97 for Identification into evidence as
5 Prosecution Exhibit 97.

6 ADC[MAJ HURLEY]: Ma'am, we have no objection to that, but just
7 to make clear, there's a line in Paragraph 5 on Page 2 of the
8 Stipulation of Expected Testimony, we understood Major Fein to say --
9 the sentence is about midway through the paragraph, it begins "I
10 oversaw". One of the dates listed, we understood Major Fein to say
11 30 January 2010, and obviously on the document itself is 30 April
12 2010, we just want to make sure -- and it may have been a
13 misperception on our part, but just to make that clear.

14 TC[MAJ FEIN]: I can reread that line, Your Honor.

15 MJ: Why don't you go ahead and do that.

16 TC[MAJ FEIN]: Yes, ma'am. So, this is Page 2, Paragraph 5,
17 Your Honor, the middle of the paragraph. "I oversaw the agents as
18 they copied the Department of State server logs from January 2009 to
19 June 2009, and from 30 April 2010 to 15 June 2010."

20 MJ: All right. Thank you. Any objection to Prosecution
21 Exhibit 97 for Identification?

22 ADC[MAJ HURLEY]: No, ma'am.

1 MJ: May I see it, please? Prosecution Exhibit 97 for
2 Identification is admitted.

3 TC[MAJ FEIN]: Ma'am, the United States offers to read on to the
4 record of Stipulation of Expected Testimony for Mr. Gerald Mundy
5 dated 26 June 2013 and has been marked as Prosecution Exhibit 163
6 Alpha for Identification.

7 MJ: Proceed.

8 MJ: It is hereby agreed by the Accused, Defense Counsel, and
9 Trial Counsel, that if Mr. Gerald Mundy were present to testify
10 during the merits and pre-sentencing phases of this court-martial, he
11 would testify substantially as follows:

12 I am currently a Branch Manager for the Bureau of
13 Intelligence and Research (INR) at the Department of State. In this
14 position, I am responsible for supervising the staff and contract
15 personnel within INR. I am the Information Security Systems Operator
16 (ISSO) for INR. I have worked there since 2012. Before working
17 there, I was with the Information Resources Management (IRM) at the
18 Department of State from 2006 to 2012, where I managed the
19 contractors, the firewall program and engineering, and managed both
20 classified and unclassified firewalls. In this position, I ensured
21 the security of specific Department of State systems used to secure
22 CLASSNET, the internal Department of State classified system, as well
23 as Net-Centric Diplomacy (NCD). Prior to that, I was a contractor

1 for Department of State from 2002 to 2006 and did similar information
2 technology (IT) security work. Finally, from 1982 to 1996, I served
3 in the United States Army. During this time, I was a Military Police
4 Officer (1982 to 1984) and also worked as a 72 Golf, in
5 telecommunications (1984 to 1996).

6 In addition to my work experience, I have several
7 certifications which qualify me for my current position. I am, for
8 instance, a Certified Information Systems Security Professional
9 (CISSP). This is a globally-recognized standard of achievement that
10 confirms an individual's knowledge in the field of information
11 security. Furthermore, I am certified as an Information Systems
12 Manager (CISM) which trains on the information management to include
13 capacity, planning, design, and development of systems, and Network
14 Plus Security training, which is vendor-neutral security training,
15 similar to what is taught in CISSP training. I have vendor training
16 and certifications in the Stonegate software for system
17 administration and engineering as well. Stonegate is the software
18 used by the Department of State firewall, which is made by Stonesoft.

19 A firewall is a boundary which protects a computer system.
20 A firewall in this instance protects our NCD database as well as our
21 CLASSNET. NDC is located in what is commonly referred to as the DMZ
22 between the Department of Defense's SIPRNET and Department of State's
23 CLASSNET. The DMZ is protected with special access. The firewall is

1 located in the DMZ between SIPRNET and NCD. There is another
2 firewall located between NCD and CLASSNET. The firewall logs track
3 the data entering a server which exists on SIPRNET and CLASSNET. The
4 Department of State firewall software automatically registers the IP
5 address of computers accessing our system. It further tracks the
6 source, time and date of access, destination, action, protocol, and
7 port associated with that IP. A log is created any time a Hypertext
8 Transfer Protocol (HTTP) talks to a TCP and successfully receives
9 information. An HTTP is the foundation of data communication for the
10 World Wide Web. It consists of packets of data, which, when
11 connected wirelessly or via Ethernet cable, creates a network for
12 communication. A TCP provides reliable, ordered, error-checked
13 delivery of a stream of data between programs running on computers
14 connected to the Internet. Simply put, if HTTP is a highway, TCP
15 constitutes the lanes on the highway.

16 The log data is computer generated and can be searched by
17 network personnel who need to access the information it collects.
18 Normally, we used this data to ensure the security of our system. I
19 know the firewall data is accurate because it is computer-generated
20 and it always logs. There is no possibility of error because if the
21 system gets full it starts to overwrite the oldest information. In
22 addition, our network personnel conduct troubleshooting on the system
23 by interrogating the logs on a daily basis. This means we check the

1 logs and ensure the system is pulling data as intended and expected.
2 The audit data is maintained on our own CLASSNET, on its own
3 protected closed-system interface. The firewall logging software and
4 the data it produces are, therefore, secure.

5 I became involved in this case after the Department of
6 State Deputy Chief Information Officer (DCIO) Charlie Wisecarver
7 requested that I isolate the data from the firewall logs for November
8 2009 to June 2010, and for IP addresses 22.225.41.22 and
9 22.225.41.40. To execute Mr. Wisecarver's request in this case, I
10 supervised the pulling of the information. The command used to
11 interface with our firewall logging software is more user-friendly
12 than Structured Query Language (SQL). The files were pulled in date
13 and time groups because of the size of the files and were saved in
14 .pdf format. Saving is an automatic function of the SQL-like command
15 when entering the search query database to pull the information. The
16 information was not altered in any way during the computer-generated
17 pull. The information that is pulled and the format in which it is
18 saved will vary depending on the type of infor -- the type of command
19 written.

20 I will explain the logs by using the following example,
21 which is an entry pulled from the file containing the date range 1
22 February 2010 to 1 March 2010 from the 22.225.41.40 IP address.

1 If there is no information in the log, it means that there
2 is no relevant information for the entry.

3 The creation time is the time that the user was allowed
4 through the firewall. In the above example it is 2010-02-14
5 15:41:38.

6 The event is what the user was doing. It shows the action
7 that triggered the rule. In the above example, new connection is the
8 event, which is showing that the source IP address was trying to
9 establish a new connection with the destination IP address.

10 The action is what the firewall is doing. Typically, the
11 firewall will allow or deny the event. In the above example, the
12 action is allow which means that source IP address was able to
13 establish a new connection with the destination IP address. The user
14 was able to enter NCD and access what the user requested.

15 The src address is the source address. This is IP address
16 of the system that is sending the request. In the above example, the
17 source address is 22.225.41.40. This is one of the two IP addresses
18 encompassed by our data pull.

19 The service is just an administrative term and represents
20 the name of the web browsing protocol. In the above example, it is
21 Generic_80.

1 The IP Protocol is the way the IP address is -- excuse me,
2 the IP addresses are communicating. In the above example, it is TCP
3 (Transmission Control Protocol). TCP is further described above.

4 In summary, the above entry tells me that the computer with
5 the IP address 22.225.41.40 accessed the NCD server on 14 February
6 2010.

7 Once all the firewall logs were pulled and saved into the -
8 - onto the share drive, they were burned to a disk. I even brought
9 the disk to the ISSO for a classification -- excuse me, Your Honor.
10 I then brought the disk to the ISSO for a classification review.
11 After the classification review, I gave the disk to Mr. Wisecarver.
12 At no point in collecting, preserving, or transporting the
13 information did I alter the content or device used to store it. I
14 have no reason to believe this evidence was altered or contaminated
15 in any way.

16 A firewall is a mechanism designed to keep unauthorized IP
17 addresses from connecting to a network or computer system that could
18 contain a database. The Department of State firewall only prevented
19 a source IP address from outside the Department of State from
20 connecting to the CLASSNET. The firewall only regulates connections
21 by IP address. Types of access and authorities were regulated by the
22 NCD, if at all, once a connection was made through the firewall
23 protections. There is no evidence to suggest that PFC Manning used

1 any tools to defeat the firewall protections. Like all users on
2 SIPRNET, he was authorized to connect using SIPRNET through the
3 firewall to NCD.

4 The log data is on a standard silver-colored CD marked with
5 "WikiLeaks DoS Firewall Logs 13 Oct 10." I recognize the firewall
6 log data based on the date and time stamp of the logs, as well as the
7 information type pulled and the nomenclature such as the vender marks
8 and the initials IPS, FW that appear at the top of the logs, which
9 signify the Department of State Bureau and firewall. Through my work
10 I have experience reading these types of logs. And, in this case, I
11 pulled a sample of the requested information to ensure it was what
12 DCIO Wisecarver wanted. Prosecution Exhibit 68 for Identification is
13 the log data I pulled.

14 Your Honor, the United States moves to admit what has been
15 marked as Prosecution Exhibit 68 for Identification into evidence as
16 Prosecution Exhibit 68.

17 ADC[MAJ HURLEY]: No objection, ma'am.

18 MJ: Prosecution Exhibit 68 for Identification is -- did I
19 already admit that?

20 TC[MAJ FEIN]: One moment, Your Honor.

21 MJ: My initials are on it, that's why I'm asking. And my
22 exhibit list has it admitted.

1 TC[MAJ FEIN]: Ma'am, we are tracking that you did already admit
2 it and we'll verify with what witness and when. Yes, ma'am. When
3 the United States read on to the record Special Agent Wilbur,
4 Prosecution Exhibit 72 Stipulation, the United States moved to admit
5 Department of State firewall logs, Prosecution Exhibit 68. And to
6 repeat what I said because I was not near a microphone, when the
7 United States moved when reading -- after reading the Stipulation of
8 Expected Testimony for Special Agent Wilbur, Prosecution Exhibit 72,
9 the United States moved to admit Department of State firewall logs,
10 Prosecution Exhibit 68, and they were admitted.

11 Ma'am, the United States I think probably now is a good
12 time to take a lunch recess.

13 MJ: All right. How long would you like?

14 TC[MAJ FEIN]: Hour and 15 minutes, ma'am, reconvene at 1315.

15 MJ: All right. Court is in recess until 1315.

16 **[The court-martial recessed at 1204, 26 June 2013.]**

17 **[The court-martial was called to order at 1329, 26 June 2013.]**

18 MJ: Court is called to order. Let the record reflect all
19 parties present when the Court last recessed are again present in
20 court. Major Fein, are you ready to proceed?

21 TC[MAJ FEIN]: The United States is ready. Ma'am, the United
22 States offers to read three stipulations with respect to testimony
23 onto the record. The first stipulation, Your Honor, is the

1 Stipulation of Expected Testimony for Special Agent Ronald Rock dated
2 9 June, 2013, Prosecution Exhibit 79.

3 It is hereby agreed by the Accused, Defense Counsel, and
4 Trial Counsel, that if SA Ronald Rock were present to testify during
5 the merits and pre-sentencing phases of this court-martial, he would
6 testify substantially as follows:

7 I currently work as a Special Agent with the U.S.
8 Department of State, Diplomatic Security Service (DSS). Prior to
9 becoming a Special Agent with the DSS, I served as a Sergeant on the
10 DSS, Uniformed Division from 1999-2001. There, I provided oversight
11 for over 50 uniformed officers at nine DoS annexes in Washington,
12 D.C. and Maryland. I graduated from the DSS, Basic Special Agent
13 Class in July 2002 where I won the DSS Director's award as the top
14 graduate. Since then, I have served in the DSS Washington Field
15 Office (2002-2004); the Secretary of State's Protective Detail (2004-
16 2006); U.S. Embassy Bogota (Colombia) (2006-2008); the National
17 Defense Intelligence College (2008-2009); the Special Investigations
18 Division (2009-2012). During my 3 years in the Special
19 Investigations Division (SID), where I was promoted to Acting Branch
20 Chief in charge of supervising seven other special agents, my
21 portfolio included the responsibility for investigating cases of
22 criminal and administrative misconduct by DoS employees, their family
23 members and contractors, as well as employees from other agencies

1 under Chief of Mission authority at U.S. Consulates and Embassies
2 worldwide. I led the investigative effort for DSS on several high
3 profile cases involving the unauthorized disclosure of DoS classified
4 information. Additionally, I drafted the standard operating
5 procedure by which SID currently investigates leaks of DoS classified
6 information.

7 I currently work at the U.S. Consulate in Mazar-e Sharif,
8 Regional Command North, Afghanistan. There, my team and I are
9 responsible for the safety and security of all American diplomats who
10 travel through the nine provinces comprising Northern Afghanistan.

11 In this case, I was involved with the coordination for
12 evidence collection, as well as the actual collection of evidence at
13 the Department of State. Specifically, I coordinated with Department
14 of State, Deputy Chief Information Officer (DCIO) Charlie Wisecarver
15 to obtain a CD containing Department of State SIPRNET firewall log
16 traffic for IP addresses 22.225.41.40 and 22 -- 22.225.41.22. On 14
17 October 2010, I visited DCIO Wisecarver in Washington, D.C. and
18 collected a disk containing the firewall logs from the Department of
19 State classified system. The disk was a silver CD bearing the
20 markings "Wikileaks DoS Firewall Logs 13 Oct 1 0." It bore a US
21 Government SECRET sticker. This disk was important to our
22 investigation as the logs showed connections between the Department

1 of State NCD Database and the IP addresses of the SIPRNET machines
2 assigned to PFC Manning.

3 On 15 October 2010, I signed the CD marked with the words
4 "Wikileaks DoS Firewall Logs 13 October 201 0" over to SA John
5 Wilbur. I handled this evidence consistent with procedures as I have
6 been trained. When signing over the evidence, I used a Department of
7 the Army Evidence Property Document (DA Form 4137) with the label DN
8 151-10 and this CD was item 1 (Bates numbers: 00411151 through
9 00411152). While in possession of this evidence, I maintained
10 positive control. I did not alter the information on the CD. I have
11 no reason to believe this evidence was damaged or contaminated in any
12 way. I did not touch this evidence again.

13 Prosecution Exhibit 68 for Identification is this CD (DN
14 151-10, Item 1).

15 Your Honor, Stipulation of Expected Testimony from Mr. Kirk
16 Ellis dated 9 June 2013, Prosecution Exhibit 77.

17 It is hereby agreed by the Accused, Defense Counsel, and
18 Trial Counsel, that if Special Agent Kirk Ellis were present to
19 testify during the merits and pre-sentencing phases of this court-
20 martial, he would testify substantially as follows:

21 I am currently a Special Agent Criminal Investigator and
22 Certified Digital Forensic Examiner for the United States Army
23 Criminal Investigation Command (CID). I am assigned to the Rock

1 Island Front Resident Agency within the Major Procurement Fraud Unit
2 and currently deployed to Afghanistan. In this position I
3 investigate fraud cases as a case agent. When in the United States I
4 also provide forensic examination services to our local field
5 offices. I have held this position for about a year. Previously I
6 worked at CIDs Computer Crim -- Crimes Investigative Unit (CCIU) as a
7 Computer Crimes Program Manager at Fort Belvoir, Virginia and Marine
8 Corps Base Quantico, Virginia. I have also worked as a case agent
9 with CCIU. I have had -- I have been a civilian special agent since
10 2008, before that I was Active Duty CID Agent for 3 years at Fort
11 Bragg, North Carolina.

12 I have substantial training that qualifies me for my
13 position. I have attended several courses run by the Defense Cyber
14 Investigations Training Academy (DCITA) in Lithicum, Maryland. I
15 have used the EnCase Forensic Tool on multiple occasions in my line
16 of work. I am also a Department of Defense Certified Computer Crimes
17 Investigator. I have a Bachelor's Degree in Multi-Disciplinary
18 Studies with a focus on business and criminal justice from Liberty
19 University in Lynchburg, Virginia. I have worked more than a dozen
20 fraud cases and approximately a dozen cases for CCIU and about 50 to
21 60 cases as an Active Duty CID Special Agent.

22 I first became involved in this case when I was a case
23 agent with CCIU. Throughout the course of this investigation I

1 worked with several other special agents on the investigative team
2 including Special Agent Bowen, Special Agent Wilbur, Special Agent
3 Edwards, Special Agent Aymes, and Special Agent Mandor. Primarily my
4 role in the investigative team was to assist with witness questioning
5 and with electronic data collection. Specifically, Special Agent
6 Bowen and I collected the Department of State server logs on 15 June
7 2010. After coordinating with Mr. Albert John Janek at the
8 Department of State for authorization we collected logs from a server
9 room in the Harry S. Truman Building of the Department of State in
10 Washington D.C. We were interested in collecting the Department of
11 State server logs so we could see users that had accessed the servers
12 and while -- and what files were specifically accessed. In this
13 instance we collected or copied the logs from January 2009 to June
14 2009 and from 30 April 2010 to 15 June 2010. We were not able to
15 collect Department of State server logs files between July 2009 and
16 30 April 2010, based on an electronic recording gap.

17 The files that were copied were placed in zip files and
18 named, "logs.zip" and "newlogs.zip". I collected these log files in
19 accordance with the training I have received. The Department of
20 State gave me a host computer that could access the logs between
21 their firewall and collected the files on a clean USB removable drive
22 (thumb drive). It was my practice to wipe and format a thumb drive
23 prior to collection. Wiping is more than just deleting. It means

1 forensically removing all information from a drive. It ensures a
2 device is completely empty of all types of data. Mr. Janek first
3 possessed the thumb drive and then signed it over to me when I
4 finished collecting the files from the host computer. After Mr.
5 Janek signed the thumb drive over to me I brought the thumb drive
6 back to CID. I created an image of the information using EnCase. I
7 imaged these items of evidence so that the data on the device can be
8 forensically examined without exposing the actual collected contents
9 to examination.

10 The image I created was verified by hash value match. I
11 encountered no errors while conducting the imaging of the evidence at
12 issue in this case. Once I verified that the hash values matched I
13 saved the EnCase image on a DVD so they could be examined and logged
14 in as evidence. I know it was clean and appropriate for evidence
15 collection for two reasons: First, it was the same type of DVD our
16 office uses to collect evidence in our standard digital evidence
17 collection practices. Second, it was new and factory made. I know
18 the data I put onto it had been unaltered because the hash values of
19 the logs collected onto the clean thumb drive matched the hash value
20 of the logs that I saved -- after I saved them to the DVD. The DVD
21 was marked, "0028-10-CID-221-10117 DEPT of State Server Logs,
22 199.56.188.73". I used a DA Form 4137, Evidence Property Custody
23 Document (EPCD), Document Number DN78-10 to describe the evidence and

1 sign it over to the evidence custodian, Mr. Garon Young. I do not
2 have any reason to believe that the evidence suffered damage or
3 contamination. I did not touch this evidence again. Prosecution
4 Exhibit 97 for Identification is DN78-10, the DVD containing the
5 Department of State Server Logs.

6 Your Honor, a Stipulation of Expected Testimony from Mr.
7 James Downey, dated 17 June 2013, Prosecution Exhibit 149.

8 It is hereby agreed by the Accused, Defense Counsel, and
9 Trial Counsel, that if Mr. James Downey were present to testify
10 during the merits and pre-sentencing phases of this court-martial, he
11 would testify substantially as follows.

12 I work at Defense Information Systems Agency (DISA), Fort
13 Meade, Maryland. Specifically, I am a part of the Program Executive
14 Office for Mission Assurance (PEO-MA) and Network Operations. I am
15 the program manager for attack analysis. I have held this position
16 since 2007. I hold the Global Information Assurance Certification
17 (GIAC) security leadership certification (GSLC), and I am a certified
18 ethical hacker.

19 The PEO-MA department, where I currently work, provides
20 program management for various programs that help secure the IT
21 information within the Department of Defense (DoD). Within PEO-MA, I
22 work for the Community Data Center (CDC). The CDC hosts a set of
23 tools used by people who secure DoD networks. We host enterprise

1 level Information Assurance (IA) tools and net defense tools, which
2 enable analysts to basically ensure the availability and integrity of
3 the networks that DISA provides for DoD. "Enterprise tools" are
4 those which are capable of handling the amount of data we deal with
5 and the large and complicated networks with which we work. Since
6 DISA is like an internet server provider for DoD, we operate on a
7 scale which is much larger than what the commercially available tools
8 are designed to handle. A "tool" is just what it sounds like,
9 something that allows us to do our network management job. Usually,
10 it is information or a way of processing or gathering information.

11 The tool relevant to this case is the data we use called
12 Netflow data. This is a type of data which was developed by Cisco,
13 but which is now industry standard. With it, we can capture the
14 Internet Protocol (IP) addresses of two computers communicating --
15 excuse me, Your Honor, communicating across the system, as well as
16 the volume of traffic which flows between them. We use YAF to
17 collect this data. YAF stands for "yet another flow meter". This
18 tool was developed by Carnegie Mellon and is the industry standard.
19 Just like any meter, it measures and then creates a data record of
20 the flow past a data collection point. A point of collection is any
21 of the various monitoring points we have stationed at key perimeter
22 locations throughout the network; for example, where a DoD network
23 crosses or connects to the commercial world. These points monitor

1 all traffic, or computer to computer communication, crossing from one
2 side of the router to another. Our system would "see" when someone
3 is on a work computer browsing internet websites like yahoo while on
4 NIPRNET or the United States Central Command Server from a computer
5 in Iraq while on SIPRNET. The system detects the capacity being used
6 during that communication and at that location. The information can
7 communicate whether something is being downloaded onto the computer -
8 - excuse me, Your Honor, on that computer. We collect Netflow data
9 on NIPRNET and SIPRNET. There are relatively few routers collecting
10 Netflow data throughout the entire SIPRNET. Because this system only
11 collects information passing from one side of the router to another,
12 it does not collect Netflow data passing within a network that does
13 not cross through a collecting router. For example, if a computer is
14 communicating with a server or another computer within the Iraq
15 SIPRNET domain, that activity would not be captured in Netflow data,
16 because the connection and data do not cross through the Iraq SIPRNET
17 domain router, but rather stays within the Iraq SIPRNET domain
18 network.

19 We collect this Netflow data for several reasons. First,
20 we use the data to conduct traffic analysis. It allows our analysts
21 to see where they need to deploy additional capacity in the DoD
22 network. For example, if one segment of the system is getting more
23 traffic than another, it may need a larger router. This type of work

1 falls within the purview of those CDC analysts working on network
2 operations and maintenance. These analysts focus on maintaining the
3 availability, robustness, and proper functioning of the Netflow data.
4 They ensure that the system is collecting data correctly, that it is
5 securely transported and stored, and that the system used to access
6 the information is on-line and functioning properly. Another section
7 however uses the Netflow data to defend the DoD network from threats.
8 For example, if a regular DoD user has a virus on his/her computer
9 that tries to connect to a malicious computer outside the network,
10 our tools enable our analysts to detect that and take the offending
11 computer offline. This section can investigate suspicious activity.
12 I work in the section that manages the delivery of CDC capabilities.
13 Finally, we also have a group using the Netflow data to research --
14 to do research and development. The Research and Development group
15 analyzes the data to try and find patterns which might help them
16 identify behavior going on that we do not currently have a means of
17 detecting. For example, with older viruses it's easy to know when
18 something has been infected, but newer ones can be more cautious in
19 how they operate. By looking at patterns over time, our analysts
20 might be able to see something that helps them find compromised
21 computers in the network before the virus infects others.

22 Centaur is what we call the system we use to track the
23 Netflow data I just described. It is one of the systems with which I

1 work in the PEO-MA. A Centaur log is the data output from our
2 Netflow data system. I became involved in this case after DISA
3 launched an audit initiative focused on integrating and analyzing
4 multiple data sources to identify and track potential insider threats
5 on SIPRNET. Because of my job, I am familiar with the Netflow data
6 Centaur generates for SIPRNET. I received a request to pull the
7 Centaur logs showing communications between three SIPRNET IPs and for
8 a specific period of time. The date range of interest was October
9 2009 to May 2010. Investigators were interested in the following IP
10 addresses: 22.225.29.185, 22.225.41.22, and 22.225.41.40.

11 To look at the Centaur data from SIPRNET, analysts use a
12 tool developed by Carnegie Melon, called SILK-System for Internet
13 Level Knowledge. Once gathered, the Centaur log can show certain
14 pieces of information. I will explain how to read the Centaur logs
15 by way of example with the following log.

16 Your Honor, rather than reading the table that is provided
17 the remaining portion actually describes the information in the
18 table. So, I will skip that portion.

19 The "sIP" is the source IP. It is the Internet Protocol
20 (IP) address of the computer that initiated the conversation that log
21 line is tracking. A "conversation" is a set of transactions that has
22 in common the same source and destination IPs and ports of which
23 occurs within the same time frame. In the above example,

1 22.225.41.40 (the destination IP addressed) received information from
2 the sending IP address, which is 204.37.126.39.

3 Prosecution Exhibit 164 for Identification is a list of
4 many of the organizations who are associated with or own the IP
5 addresses searched by the 22.225.29.185, 22.225.41.22, and
6 22.225.41.40 IP addresses.

7 MJ: Can I interrupt you for just a second?

8 TC[MAJ FEIN]: Yes, ma'am.

9 MJ: The copy that the Court has is Prosecution Exhibit 152.
10 Was there a change made?

11 TC[MAJ FEIN]: Yes, ma'am. That is what was reflected prior to
12 the lunch recess that this is Page 3 and that Prosecution Exhibit 152
13 was changed with the concurrence of the defense to Prosecution
14 Exhibit 164. So, the Court's copy is -- The Court needs a newer copy
15 of the actual Stip.

16 MJ: So, I'm supposed to be looking at 164?

17 TC[MAJ FEIN]: Yes, ma'am.

18 MJ: Okay. And I'm looking at Prosecution Exhibit 149, which
19 was the old one?

20 TC[MAJ FEIN]: No, ma'am. Prosecution Exhibit 149 is the
21 Stipulation of Expected Testimony that's been admitted. That
22 Stipulation, Prosecution Exhibit 149 was amended prior to going on

1 the lunch recess. That -- Right there in that paragraph, on top of
2 Page 3 the 152 was lined out and changed to 164.

3 MJ: All right. And I see a set of initials next to that.
4 Major Hurley, is that your initials and PFC Manning's?

5 ADC[MAJ HURLEY] Yes, ma'am.

6 MJ: So, you all agree with the changes?

7 ADC[MAJ HURLEY] Yes, ma'am.

8 ACC: Yes, ma'am.

9 MJ: Okay.

10 TC[MAJ FEIN]: So, ma'am, the 152 in that top paragraph should
11 be slashed through and it should be changed to 164.

12 MJ: Got it.

13 TC[MAJ FEIN]: B: The "dIP" or destination IP is the IP address
14 for the computer that received the data from the SIP. The dIP in the
15 above example is 22.225.41.40. The "s port" is the port that the SIP
16 was using to communicate. A port itself is a way the computer can
17 carry on multiple conversations on a network at the same time. You
18 can think of it like a mail slot or a particular channel that a
19 computer uses to hold a conversation. The s port in the above
20 example is 80. S Port code 80 indicates all internet web traffic,
21 including browsing on the web. The "d port" is the destination port.
22 This is the port the dIP was using to communicate. Essentially it is
23 the computer which received the conversation. The d Port in the

1 above example is 2641. The log item "pro" stands for protocol. The
2 protocol is the convention, or language, which the two computers were
3 using to talk to one another. The number "6" is the Transmission
4 Control Protocol (TCP). TCP is a language. TCP is the dominant
5 protocol. Knowing the protocol is important because it tells you the
6 kind of conversation the two logged IP addresses were having. For
7 example, another protocol is the number "1" for ICMP. Protocols like
8 TCP are generally used by users to generate and receive data.
9 Protocols like ICMP are used by computer systems to report back on
10 status or to support other protocols. "Packets" are the chunks of
11 the computer -- excuse me, Your Honor. "Packets" are the chunks a
12 computer breaks information up into in order to transmit it across
13 the network. The ratio of packets to bytes for example can tell
14 analysts about the nature of the conversation occurring; essentially,
15 packets communicate complexity. A byte is simply a unit of measuring
16 the size of data or seeing volume. A large number of bytes relative
17 to the packets means a large file is getting downloaded. A small
18 byte count means a lower level form of communication. The packets in
19 the above example is 1379. A byte itself is simply a unit of
20 measuring the size of data or seeing volume. Beyond its relationship
21 to a packet, in raw form, the byte tells exactly how much information
22 was exchanged in a given conversation. "Bytes" provide a straight
23 forward measurement of how much data was transmitted, where the

1 packets can tell you how that data was transmitted. The bytes in the
2 above example is 1305267. "s Time" is the time the communication
3 between IPs started. In the above example the particular
4 communication between 204.37.126.39 and 22.225.41.40 stated at
5 2009/12/19T01:41:43.633.

6 The column labeled "dur" is its duration. The duration is
7 given in seconds. Knowing this information is important because
8 different durations are characteristic of different kinds of
9 conversations. This information helps analysts like me guide our
10 inferences about the data by providing context for the communication
11 we are seeking to understand. The above communication took 112.650
12 seconds to complete. "eTime" is the time a communication ends. The
13 above communication between 204.37.126.39 and 22.225.41.40 ended at
14 2009/12/19T01:43:36.283, which should be 112.650 seconds after the
15 sTime. "Sensor" means the collection point used to collect the data
16 being communicated in the log line. It identifies the router or the
17 sensor generating the record and basically tells us where on the
18 network the traffic the log line describes occurred. The sensor in
19 the above example is SPE-SMEC.

20 Together, this information allows analysts to see the IP
21 address of an individual computer using the system and the complexity
22 and volume of information being communicated as well as the length of
23 time the computer is conducting its activity. The above log tells me

1 that the IP address 22.225.41.40 received 1305267 bytes of data from
2 IP address 204.37.126.39 on 19 December 2009.

3 As I indicated earlier, the Centaur log data is very useful
4 in detecting suspicious activity. While it will not automatically
5 alert analysts in the security section of suspicious activity, part
6 of their job is to schedule scripts which look for activity. DISA
7 also deploys detection tools at multiple locations through the
8 network with unique signatures. These look for a particular type of
9 suspicious user activity. For example, going to a known blocked
10 websites or known malware servers is something we can detect. When a
11 user takes the action that fits the signature activity, this action
12 triggers an alert to an analyst in something close to real time.
13 Security analysts also work off of tips. These tips can come from
14 digital alerts like the ones I just described or from sources such as
15 Information Assurance groups within DoD organizations which are
16 responsible for their own local security. Alternatively, law
17 enforcement can request information from our system as occurred in
18 this case.

19 The format in which the system returns results to our
20 queries varies depending on the query. All of these tools run from a
21 command line using text command. The answer to the query comes back
22 in a native binary file. But then another tool translates that
23 automatically into a regular text file so that it is readable by a

1 human. The analyst then defines which information they want to see
2 and in what order. By "information," I am referring to the terms I
3 defined earlier, such as "sIP" and "dur." An analyst then makes the
4 report using this data. The report includes the data and may also
5 include the analyst's interpretation of what that data means, why
6 it's important, and what the context is.

7 The latter occurred in this case. When asked for a certain
8 date range of data tied to the relevant IP addresses in this case, we
9 pulled the data. We found communications for the IP addresses I
10 discussed earlier between November of 2009 and May of 2010. I am not
11 aware of any irregularities occurring, and we did some tests to
12 ensure the data was accurate.

13 Drastic changes in the history of a log tell me one of two
14 things. When a log is not consistent with previous behavior over a
15 large period of time, it would indicate to me that either a sensor
16 was down or the relevant computer was turned completely off. There
17 should always be some baseline level of activity for a computer
18 connected to a network.

19 After collecting the data, I saved files of the log data
20 which were then burned to a CD for the investigators. The CD was
21 marked "6/15/2012, UNCLASSIFIED, hub_out_dip.csv; hub_out_sip.csv;
22 spe_out_dip.csv; spe_out_sip.csv." These .csv file names represent
23 the different log data that was pulled. They show activity of the

1 22.225.29.185, 22.225.41.40, and 22.225.41.22 IP addresses as the
2 source and destination IPs. The information was sent via tracked
3 FedEx package to Special Agent David Shaver. The tracking number was
4 875027891920. Prosecution Exhibit 152 for Identification is the CD
5 containing the log data I collected. I recognize the data on the CD
6 because I collected it, and I recognize the logs based on the column
7 identifiers and familiarity with Centaur logs, which I described
8 earlier. A records custodian attested to their authenticity on 15
9 June 2012 at Bates number: 00449443.

10 At no point during my collection or transport of these logs
11 did I alter them in any way. I have no reason to believe any of my
12 colleagues altered the data or experienced anything out of the
13 ordinary in collecting it. And, I have no reason to believe the data
14 provided or the device on which it was stored was damaged or
15 contaminated in any way. Finally, I am not aware of any issue in the
16 collection, storage, or transport of this information which would
17 cause it to have been incorrectly preserved.

18 Your Honor, the United States moves to admit what has been
19 marked as Prosecution Exhibit 152 and 164 for Identification as
20 Prosecution Exhibit 152 and 164.

21 ADC[CPT TOOMAN]: No objection, ma'am.

22 MJ: May I see them, please? All right. Prosecution Exhibit
23 152 for Identification and 164 for Identification are admitted.

1 ATC[CPT MORROW]: The United States calls Special Agent David
2 Shaver.
3 SPECIAL AGENT DAVID SHAVER, U.S. Army, was recalled as a witness for
4 the prosecution, was reminded he was still under oath, and testified
5 as follows:

6 DIRECT EXAMINATION

7 Questions by the assistant trial counsel [CPT Morrow]:

8 Q. Special Agent Shaver, you testified earlier that you
9 examined Centaur logs as a part of this case. Is that correct?

10 A. Yes, sir.

11 Q. And in your own words, what is Centaur?

12 A. Centaur is -- they are logs filed that are captured on
13 netflow information.

14 Q. What is netflow?

15 A. Sir, that's the traffic between two computers. It will
16 capture things like source computer, destination computer, dates,
17 times, amount of data transferred.

18 Q. And how does Centaur actually capture information?

19 A. There are sensors throughout the network, the DoD network,
20 that if communication, you know, goes in front of it, it will capture
21 it.

22 Q. And you examined Centaur logs as part of other
23 investigations at CCIU?

1 A. Yes sir, I have.

2 Q. Why?

3 A. In my previous role at CCIU we would do other log
4 examinations concerning malware. The Centaur logs are really good
5 for seeing how one computer will communicate with another for how
6 malware would propagate on a network.

7 Q. What do you, mean by malware?

8 A. Malicious software.

9 Q. And what information was examined in this case by CCIU and
10 specifically you?

11 A. For Centaur?

12 Q. Yes, for Centaur.

13 A. We looked at the log files pertaining to the .22 and .40
14 computers from November 2009 until May 2010.

15 Q. And the use of the log files for those two IP addresses,
16 what did they actually capture?

17 A. They were capturing things -- again, dates and times, the
18 protocols used to communicate.

19 Q. What was on the other side? Maybe that's a better
20 question. What does Centaur capture?

21 A. It captures an IP address. It captures IP addresses,
22 things like that. IP addresses, dates and times.

1 Q. When you say that -- but it captures a connection. Is that
2 correct?

3 A. Yes, sir.

4 Q. And what does it capture the connection of?

5 A. Transfer of data. There's data transferred.

6 Q. Between what?

7 A. Two computers, computer and a server.

8 Q. So if a computer is on the other side, that computer can be
9 a server as well?

10 A. Yes, sir.

11 Q. Now, when you're trying to determine what computer is on
12 the other side so you have the source IP which is .22 or .40 and
13 you're trying to determine what is on the other side, so whatever
14 computer the .22 or .40 communicate with, how do you figure that out?

15 A. There's a few ways. I basically -- because it's an IP, I
16 can resolve the IP to a more friendly name.

17 Q. What do you mean by a friendly name?

18 A. For example, CNN. You can remember CNN. That's easy to
19 remember. But it's actually an IP address of a computer and an IP
20 address may be something like 123.123.1.2 You won't remember that.
21 So it's called domain name service, DNS. It just resolves a friendly
22 name to an IP and you can reverse that as well, figure out who the IP
23 belongs to.

1 Q. And the domain name service, where is that tool located?

2 A. Sir, that's part of the -- it's on the SIPRNET. It's just
3 part of the internal classified network.

4 Q. What was your investigative plan for the Centaur logs you
5 looked at?

6 A. Looked for patterns. Because it shows data transferred. I
7 was kind of curious to see which computers were .22 and .40, what
8 were they communicating to the most.

9 Q. And from the log files came to you for analysis, in what
10 form were they in?

11 A. They were in text files, log files.

12 Q. What did you do with the text files?

13 A. I put them in Excel for easier review.

14 Q. And when you put them in Excel, did you alter the
15 information in any way?

16 A. No, sir.

17 Q. Now, once you had the information in the Excel spreadsheet,
18 what did you do?

19 A. I then started filtering. The first one I filtered was,
20 like, amount of data transferred and I just wanted to figure out,
21 again, whose computers were communicated to the most.

22 Q. I'm showing you what's been marked as Prosecution Exhibit
23 160 for Identification. I'm showing defense counsel. Agent Shaver,

1 I'm handing you what's been marked as Prosecution Exhibit 160 for
2 Identification. Do you recognize that document?

3 A. Yes, sir. I do.

4 Q. What is it?

5 A. This is a document I created. It's a summary of a small
6 segment, actually, of the log file for Centaur that -- where I have
7 the names, other remote servers and the number of connections and
8 data transferred.

9 ATC[CPT MORROW]: Permission to publish, Your Honor.

10 MJ: Go ahead.

11 **[There was a brief pause while the assistant trial counsel published**
12 **the exhibit to the Court and the witness.]**

13 Q. We'll go through this up here and follow along. So I see
14 ten numbers on the left. What are those numbers?

15 A. Sir, based off the amount of data transfer, the column on
16 the right, that's where I sorted on the amount of data transferred.
17 So these ten are the top ten remote computers, the 22 and 40, the
18 Centaur captured them communicating with.

19 Q. So, really, it's ordered by what's on the very far right?

20 A. Correct.

21 Q. Okay. And I see a number of connections. What does that
22 mean?

1 A. That is just that. It's a connection. The Centaur logs
2 captured a connection between the two computers, the 22 or 40, and
3 these computers.

4 Q. Now, with respect to Line 4, I see the remote IP is CIDNE
5 Afghanistan. Do you recall the date range of those connections of
6 that data being transfer?

7 A. Yes, sir. That was January 2010, early January. I think
8 it was January 2 to January 7th.

9 Q. And what about the Department of State, Number 1?

10 A. Yes, sir. There are a lot of connections. This one
11 captured 106 -- over 106,000, connections and transferred 9.9 gigs of
12 data.

13 ATC[CPT MORROW]: Now, based on your review -- Your Honor, the
14 government moves to admit Prosecution Exhibit 160 for Identification
15 into evidence.

16 ADC[MAJ HURLEY] No objection, ma'am.

17 MJ: Prosecution Exhibit 160 for Identification is admitted.

18 Q. Based on your review of the entirety of the Centaur logs,
19 were the -- did you notice any activity that was missing in the logs?

20 A. Yes, sir. There were several dates that there was no
21 activity at all.

22 Q. And can you explain what no activity means to you?

1 A. Again, these computers are still -- they're on a Windows
2 domain and, as such, they need to regularly check in. They need to
3 check in with their timeserver, antivirus server, update server,
4 things like that. There are several periods of time where there was
5 connectivity -- there was no dates at all.

6 ATC[CPT MORROW]: I'm retrieving what's been marked as
7 Prosecution Exhibit 161 for Identification.

8 MJ: Yes.

9 ATC[CPT MORROW]: I'm showing the witness what is marked
10 Prosecution Exhibit 161 for Identification.

11 Q. Do you recognize that document?

12 A. Yes, sir.

13 Q. And what is it?

14 A. This is a document I created to demonstrate -- to show the
15 dates present in the Centaur logs and the dates that are missing from
16 the Centaur logs.

17 Q. Now, when you say a date is present in the Centaur logs,
18 what do you mean by that?

19 A. That means that on that date something -- there's some kind
20 of network activity, something.

21 Q. And when you say dates missing, what does that mean?

22 A. There was no activity at all.

23 ATC[CPT MORROW]: Permission to publish, Your Honor.

1 MJ: Go ahead.

2 [There was a brief pause while the assistant trial counsel published
3 the exhibit to the Court and the witness.]

4 Q. Agent Shaver, I'm going to show you Page 1 first and I want
5 to talk about some of the larger gaps you observed. What was the
6 first large gap you observed in the Centaur logs?

7 A. November -- November 20th through November 30th, actually.

8 Q. Okay. What was the second large gap you observed in the
9 log?

10 A. There is a large gap in December as well, December 6th
11 through the -- basically, it looks like the end of December.

12 Q. Okay. I'm going to show you the bottom of that page,
13 actually. Again, was there a large gap -- I know you can't see the
14 very top here, the "dates missing" column, but was there a large gap
15 in April as well?

16 A. Yes, sir.

17 Q. What was the large gap there?

18 A. On this page it shows April 2 through April 9th on this
19 page.

20 Q. I'm going to show you Page 2. Again, it looks like there
21 was sort of a large gap in April as well towards the middle to the
22 end of the month. Is that correct?

23 A. Yes, sir.

1 ATC[CPT MORROW]: Your Honor, the prosecution moves to admit
2 Prosecution Exhibit 161 for Identification into evidence.

3 CDC[MR. COOMBS]: No objection, Your Honor.

4 MJ: So admitted. May I see it? Prosecution Exhibit 161 for
5 Identification is admitted.

6 Q. Now, I want to transition to logs collected from the
7 Department of State. Who examined the logs collected from the
8 Department of State for CCIU?

9 A. I did, sir.

10 Q. And how many sets of logs were collected?

11 A. There were two.

12 Q. And what were the logs?

13 A. One was a set of logs from a firewall and another one was
14 from a web server hosting the Department of State cables.

15 Q. What is a firewall?

16 A. Sir, that's either a physical device for a piece of
17 software that limits traffic, allows some traffic in while
18 disallowing others.

19 Q. Why do organizations use firewalls generally?

20 A. It's for security measures, to make sure certain computers
21 are authorized to communicate from certain ports such as like a web
22 server, port 80. So it's only allowed port 80 in instead of others.

23 Q. And what kind of information do firewall logs capture?

1 A. Generally, times and dates, IP address, connecting in where
2 they're going, things like that.

3 Q. Does it capture, you know, like, data transferred, what
4 files were transferred, anything like that?

5 A. It could.

6 Q. It could? But what about the firewall logs collected in
7 this case?

8 A. It did not. It just showed there's a connection between
9 the remote computer -- in this case, it was .22 or .40 and the
10 Department of State server.

11 Q. Now, in what form did the firewall logs come to you in this
12 case?

13 A. They came to me in PDF.

14 Q. And what did you do with those PDFs?

15 A. I converted them to text and then I imported them into
16 Excel for easy review.

17 Q. Once you got them in Excel, I assume you examined those
18 logs at that point. Is that correct?

19 A. Yes, sir.

20 Q. Did the firewall logs demonstrate any pattern that you
21 could see?

1 A. There were patterns, sir. Again, I could not tell you what
2 was transferred, but I can tell you like number of connections per
3 day.

4 ATC[CPT MORROW]: I'm retrieving what's been marked as
5 Prosecution Exhibit 159 for Identification. I'm handing the witness
6 what's been marked as Prosecution Exhibit 159 for Identification.

7 Q. Do you recognize that document?

8 A. Yes, sir.

9 Q. What is it?

10 A. Sir, this is a document I created. It shows the summary of
11 the source IP, either .40 or .22, the date and the number of
12 connections, the log entries.

13 Q. Number of connections with what?

14 A. The Department of State server.

15 Q. The server or the firewall?

16 A. This is the firewall capturing. So it's passing through.

17 ATC[CPT MORROW]: Okay. Your Honor, permission to publish.

18 MJ: Go ahead.

19 **[There was a brief pause while the assistant trial counsel published**
20 **the exhibit to the Court and the witness.]**

21 Q. Agent Shaver, let's go through this. What was the large --
22 the pattern that you observed in the firewall?

1 A. From the beginning, it was very few connections and then
2 until 30 March 2010 the IP .22 downloaded, or excuse me, connected. I
3 apologize, sir. There were 149,000 connections.

4 Q. On 30 March from the .22?

5 A. Correct.

6 Q. Again, going down through April, sort of the same type of
7 activity?

8 A. There are a large number of connections, yes, sir.

9 Q. Now, I see between the last date, 9 April 2010 and 3 May
10 2010, there's sort of a gap there. What does that mean?

11 A. No activity. I had no action, no activity for either IP at
12 those -- for that time period.

13 Q. Now, based on what we saw on the Centaur logs for the April
14 timeframe and then what we are now seeing in the Department of State
15 firewall logs, what does that tell you?

16 A. Again, like, for example, 8 April, that date is not present
17 in Centaur, but it is present here.

18 Q. But, again, you observed at least some connections for some
19 dates in Centaur -- in the Centaur logs?

20 A. Yes, sir.

21 MJ: Before you remove that, let me just ask you a question. So
22 when you're looking at, for example, 30 March of 2010 the computer
23 with the address, was it .22 or .40?

1 WIT: .22, ma'am.

2 MJ: Are you saying that computer went to the Department of
3 State website that amount of times?

4 WIT: The firewall log shows there are a number of connections.
5 The issue I had was, I'm not exactly sure what the connections mean.
6 It just means that log file -- that firewall captured that 149,000
7 times. That's what it deemed as a connection. Is that individual
8 file being downloaded each time? I don't know. I could just say
9 there's a connection between the two computers that many times.

10 MJ: Let me ask you one more question. If somebody was to have
11 that many connections on one day, how long would that take?

12 WIT: Um ----

13 ATC[CPT MORROW]: Actually, Your Honor, I can ask a very
14 specific question that Agent Shaver can speak to.

15 MJ: Go ahead.

16 **Questions continued by the assistant trial counsel [CPT MORROW]:**

17 Q. On 30 March, Agent Shaver, how many -- over the course of
18 that day, how many hours between the first connection and the last
19 connection on that day?

20 A. I think there was 11 hours.

21 MJ: That doesn't answer my question. Could a person using a
22 computer have that many ----

23 WIT: In an automated process, yes.

1 MJ: Go ahead.

2 ATC[CPT MORROW]: Your Honor, the prosecution moves to admit
3 Prosecution Exhibit 159 for Identification into evidence.

4 CDC[MR. COOMBS]: No objection, Your Honor.

5 MJ: All right. Prosecution Exhibit 159 for Identification is
6 admitted.

7 **Questions continued by the assistant trial counsel [CPT MORROW]:**

8 Q. Agent Shaver, let's talk about the Department of State
9 server logs. What kind of information did the server logs capture?

10 A. Sir, these were standard Windows log files. They captured
11 dates and times, the remote IP and the file requested and things like
12 that.

13 Q. So they were a little more descriptive than the firewall
14 ones?

15 A. Yes, sir.

16 Q. Now, did the server logs, were there any large gaps in data
17 that you that came to you when you did the examination in the server
18 logs?

19 A. The server logs only were from April 30th until June. So
20 anything prior to April 30th, there were no log files.

21 Q. Do you know why there were no log files before that date?

22 A. No, sir, I do not.

23 Q. Now, what, if anything, did you observe in the server logs?

1 A. There was a large number of downloads on 3 May using the --
2 from .22 using the Wget utility.

3 Q Agent Shaver, I'm going to ask you to move to the panel
4 box, please and I'm going to retrieve Prosecution Exhibit 158 for
5 Identification.

6 TC[MAJ FEIN]: Could I have a moment, Your Honor?

7 MJ: Yes.

8 **[There was a brief pause while the trial counsel spoke with the**
9 **assistant trial counsel.]**

10 ATC[CPT MORROW]: Agent Shaver, could you move back to the
11 witness box.

12 Q. I'm handing what's been marked as Prosecution Exhibit 158
13 for Identification.

14 A. Yes, sir.

15 Q. Do you recognize the document?

16 A. Yes, sir.

17 Q. What is it?

18 A. This is one-page of the log files for the Department of
19 State server.

20 Q. Now, when you say one page, what's the number at the bottom
21 of the page?

22 A. This is Page 28 out of 641.

1 Q. So it printed the activity on that day for 3 May would have
2 been 641 pages?

3 A. Correct.

4 Q. Approximately how many lines of data, approximately?

5 A. 17.

6 Q. On that page?

7 A. On this page, yes.

8 Q. No, I'm talking total, if you add all 641 pages, how many -
9 ---

10 A. Thousands.

11 Q. an you describe, in general terms, sort of what you're
12 observing in those logs when you look at them?

13 A. Yes, sir. From left to right we have a line number. Then
14 we have the remote IP which, in this case was .22. We have the date
15 and time of the file being downloaded. In this case, it's May 3rd,
16 2010, and then we have the files being downloaded. In this case
17 here, Department of State MRNs.

18 Q. And you said something about Wget, you observed Wget in the
19 logs. Can you explain that, please?

20 A. Yes, sir. Wget was the tool that was used to download these
21 files.

22 Q On this day, May 3rd?

23 A Yes, sir.

1 ATC[CPT MORROW]: Your Honor, the prosecution moves to admit
2 Prosecution Exhibit 158 for Identification into evidence.
3 ADC[CPT TOOMAN]: No objection, ma'am.
4 MJ: May I see it please? Prosecution Exhibit 158 for
5 Identification is admitted.
6 ATC[CPT MORROW]: We're going to move that out of your way
7 first.
8 **[The assistant trial counsel retrieved Prosecution Exhibit 158 from**
9 **the witness.]**
10 **Questions continued by the assistant trial counsel [CPT MORROW]:**
11 Q. I want to move back to computers that you examined in this
12 case.
13 A. Yes, sir.
14 Q. Did you examine any NIPRNET computers collected as part of
15 this investigation?
16 A. Yes, sir, I did.
17 Q. What did you examine?
18 A. I examined the computer -- NIPRNET computer ending in the
19 address .139, which was a NIPRNET computer in the common area of the
20 SCIF.
21 Q. Okay. So, let's back up. When you say .139, what are you
22 referring to?

1 A. I'm referring to the last .text of the IP address. The
2 unit identifier.

3 Q. And this computer was collected from where?

4 A. FOB Hammer, Iraq, the SCIF itself.

5 Q. And did PFC Manning have a user account on this computer?

6 A. He did.

7 Q. What was that user account? Do you recall?

8 A. Bradley.Manning.

9 Q. And did other individuals have user accounts on this
10 computer?

11 A. Yes, sir.

12 Q. And you said it was a common area computer?

13 A. Yes, sir.

14 Q. Now, was this computer CAC enabled, so Common Access Card
15 Enabled?

16 A. No, sir, it was not. It was a user name and password what
17 had to be used to.

18 Q. And when a user logged on to this computer, what would
19 happen?

20 A. You'd see a warning banner, sir.

21 ATC[CPT MORROW]: I'm retrieving what's been marked as
22 Prosecution Exhibit 156 for Identification now.

23 MJ: What's the number of that one?

1 ATC[CPT MORROW]: 156.

2 Q. Agent Shaver, I'm handing you what's been marked as
3 Prosecution Exhibit 156 for Identification. Do you recognize that
4 document?

5 A. Yes, sir.

6 Q. What is it?

7 A. Sir, this is the document I created. I removed -- This is
8 a -- the DoD warning banner from the .139 computer. I removed it --
9 copied it from the registry file and put it in a Word document.

10 Q. So, that's not actually how it would appear on a computer?

11 A. No.

12 Q. You copied that over?

13 A. Correct. This is just the text of it, sir.

14 Q. And when you copied it over did you alter in any way?

15 A. No, sir.

16 ATC[CPT MORROW]: Your Honor, the prosecution moves to admit
17 Prosecution Exhibit 156 for Identification into evidence.

18 CDC[MR. COOMBS]: No objection, ma'am.

19 MJ: May I see it please? Prosecution Exhibit 156 for
20 Identification is admitted.

21 Q. Agent Shaver, we'll talk about SIPRNET warning banners
22 later. I want to move on to your examination of this computer. Now,
23 when you examined this computer, what exactly did you examine?

1 A. I examined an image of the computer itself, not the
2 computer.

3 Q. And what was your process again for your examination?

4 A. Sure. The image was checked out. I verified the
5 acquisition and verification hashes matched. I made a working copy
6 and I did my examination on that.

7 Q. And what were you looking for on this computer?

8 A. Sir, since this was a NIPRNET computer. I wanted to see
9 what was there and what was allocated, the files and internet history
10 and things like that.

11 Q. All right. So let's talk about internet history. Where do
12 you find internet history on a computer?

13 A. Several locations, but in this case since Internet Explorer
14 was the only browser, it was within a file called index.DAT.

15 Q. And again, what does index.DAT capture?

16 A. It captures both the local files viewed and websites,
17 access.

18 Q. What do you mean by local files viewed?

19 A. Like if you had a file on your desktop, you could -- and
20 you accessed it, it would capture that as well.

21 Q. Now, you said it captured websites as well. Is that
22 correct?

23 A. Correct.

1 Q. Did it capture searches? Searches on, like, Google, for
2 example, something like that?

3 A. It would have, yes.

4 Q. And what kind of searches did the Bradley.Manning user
5 account conduct that you observed?

6 A. There were several. Things for like Wget was one. Bay
7 64, Excel and WikiLeaks as well.

8 Q. And how far back ----

9 MJ: You said Bay 64?

10 WIT: Bay 64 and Excel, yes, ma'am.

11 Q. Again, for the Court, Agent Shaver, what is Bay 64?

12 A. That's an encoding mechanism where it takes text and you
13 can encode it into XML form. It's good for -- it's used for
14 compression.

15 Q. And if you would, just describe where you've seen Bay 64 --
16 in what context have you seen Bay 64 on the SIPRNET computers you
17 have examined?

18 A. On the .22 computer, there was a common separated values,
19 CSV files, of Department of State cables which had been converted to
20 Bay 64.

21 Q. What about on the .40 computer?

1 A. There was -- On the .40 computer, within the allocated
2 space, there was one CSV file containing over 100,000 complete
3 Department of State cables but they had been Bay 64 encoded.

4 Q. Now, let's go to the internet activity. How far back were
5 you able to see activity under the Bradley.Manning user account on
6 this computer?

7 A. It was started in March 2010.

8 ATC[CPT MORROW]: I'm retrieving what's been marked as
9 Prosecution Exhibit 157 for Identification. I'm showing it to the
10 defense counsel.

11 Q. I'm showing you what has been marked as Prosecution Exhibit
12 157 for Identification.

13 MJ: Prosecution Exhibit?

14 ATC[CPT MORROW]: 157. I'm handing the witness what's been
15 marked as Prosecution Exhibit 157 for Identification.

16 Q. Agent Shaver, do you recognize that document?

17 A. Yes, sir.

18 Q. What is this document?

19 A. Sir, this is a document I created. It is the small segment
20 of the internet history from the index.DAT file of the
21 Bradley.Manning user profile.

22 Q. Now, let me stop you there. How is it created? So it's
23 not the entirety of the index.DAT?

1 A. No, sir. It's a very small segment.

2 Q. How did you create that small segment?

3 A I converted the index.DAT to an Excel document.

4 Q. And then what did you do?

5 A. I filtered on the keyword Wget.

6 ATC[CPT MORROW]: Your Honor, permission to publish?

7 MJ: Go ahead.

8 **[There was a brief pause while the assistant trial counsel published**

9 **the exhibit to the Court and the witness.]**

10 Q. Agent Shaver, I don't want to go through the whole thing,

11 but I want to go through a couple of lines of information here. Can

12 you see that?

13 A. Yes, sir.

14 Q. Let's talk about the first line. Can you describe the

15 activity you're observing now?

16 A. Yes, sir. Again, the line number, Number 1, the date and

17 time. It shows the Bradley.Manning user profile, searched Google for

18 the keywords "Wget" and "ampersand."

19 Q. And how does an ampersand work with Wget?

20 A. It's ----

21 Q. What's -- Why would those two be connected in some way?

22 A. Then you get a command line tool. There is a lot of

23 switches and a lot of choices -- you can tell it to do a lot of

1 things. The ampersand sign in this case, it would help it run a
2 little quicker to download the files.

3 Q. Now, let's move down to -- Now, Line 1 is just a search of
4 the Internet, Wget and ampersand?

5 A. Correct.

6 Q. Let's look at Line 9.

7 A. Yes, sir.

8 Q. What is that activity?

9 A. That's on 27 March 2010, and that's the file Wget.exe being
10 downloaded from the website.

11 Q. And now let's move to Line 15.

12 A. Yes, sir.

13 Q. Again, what's the activity you are observing?

14 A. On May 3rd, 2010, again, the Bradley.Manning user profiles,
15 someone is downloading Wget.exe again.

16 Q. Again, let's -- so I can circle back here. The first line
17 at least in this is 3 March or 7 March 2010?

18 A. Correct.

19 Q. Again, what was the -- how much internet activity were you
20 actually able to observe on the index.DAT file on this computer?
21 Anything before 7 March 2010?

22 A. No, sir.

1 ATC[CPT MORROW]: Your Honor, the prosecution moves to admit
2 Prosecution Exhibit 157 for Identification into evidence.
3 ADC[CPT TOOMAN]: No objection, Your Honor.
4 MJ: Prosecution Exhibit 157 for Identification is admitted.
5 **Questions continued by the assistant trial counsel [CPT MORROW]:**
6 Q. Now, you say the user, the Bradley.Manning user downloaded
7 Wget on 3 May 2010. Is that correct?
8 A. Correct.
9 Q. At least from what you observed in the Internet Explorer?
10 A. Yes, sir.
11 Q. Now, did you observe Wget being used from this computer?
12 A. No, sir.
13 Q. In the course of this investigation, have you seen evidence
14 that Wget was present on other computers?
15 A. Yes, sir.
16 Q. And what other computers?
17 A. On .22, sir.
18 Q. Now, did you see any evidence that the Wget file downloaded
19 on this NIPRNET computer was moved to the .22 computer?
20 A. Yes, sir.
21 Q. Can you explain that, please?

1 A. Yes, sir. Again, I did the hash value of the file being on
2 the Wget file on the .139 computer matched exactly the same file
3 within the Bradley.Manning user profile on .22.

4 Q. And could you tell on .22 when that movement occurred, when
5 that file was created on that computer, SIPRNET computer?

6 A. It was shortly -- It was a few hours afterwards created on
7 .139. So I believe .39 was almost 2000 hours and just a few hours
8 later it was on .22.

9 Q. Agent Shaver, I want to go back to the .22 computer and tie
10 up a few lose ends. I mentioned warning banners earlier. Now, were
11 the SIPRNET computers CAC Enabled?

12 A. No, sir.

13 Q. And how did a user log on the SIPRNET?

14 A. User name and password.

15 Q. And how do you know that?

16 A. I converted the computer into a virtual machine and booted
17 it up and it asked me for a user name and password.

18 ATC[CPT MORROW]: I'm retrieving what has been marked as
19 Prosecution Exhibit 155 for Identification. I'm showing the defense
20 counsel. I am handing the witness what's been marked as Prosecution
21 Exhibit 155 for Identification.

22 Q. Do you recognize that document?

23 A. Yes, sir.

1 Q. And what is it?

2 A. This is a document I created and from within .22 I went to
3 the register file and removed the -- copied out the warning banner
4 and placed it on the support document.

5 Q. So when you copied out the warning banner from the registry
6 file on the .22 computer and you copied it over to a Word document,
7 did you alter the information in any way?

8 A. No, sir.

9 ATC[CPT MORROW]: The prosecution moves to admit Prosecution
10 Exhibit 155 for Identification into evidence.

11 ADC[CPT TOOMAN]: No objection, ma'am.

12 MJ: May I see it please? Prosecution Exhibit 155 for
13 Identification is admitted.

14 Q. Agent Shaver, I want to talk again about -- there's been
15 some confusion in this case about the settings for internet browsers.
16 Again, I want to talk specifically about the Mozilla Firefox web
17 browser. What is that?

18 A. It's a web browser, sir.

19 Q. And how does a user use the web browser? How is it
20 utilized by someone, sir? This isn't a trick question.

21 A. Yes, sir. You would double-click on the icon, it would
22 open up and it goes to your homepage and then you would surf the web.

1 Q. And do web browsers store information when you click open
2 and search the web?

3 A. By default. In this case, Firefox, by default, it does
4 save that information.

5 Q. So by default, Firefox saves Internet Explorer or Internet
6 web browsing history?

7 A. Correct.

8 Q. When you examined the .22 computer, you looked at the
9 Firefox web browser, correct?

10 A. Correct.

11 Q. How was that web browser configured?

12 A. Within the Bradley.Manning user profile, that profile had
13 been configured to -- to turn private browser mode on so it would not
14 obtain any history. But other users on the .22 computer also had
15 Firefox, but those computers -- those profiles were not configured
16 that way. They were configured the default way or history would be
17 maintained.

18 Q. Now, in order to -- so essentially what I'm hearing is
19 private browsing has to be enabled by a user, it's not something that
20 is the normal protocol for the web browser?

21 A. Correct.

22 Q. One moment, Your Honor. Are you familiar with a video
23 called Collateral Murder?

1 A. Yes, sir.

2 Q. And where have you seen that video in this case?

3 A. Within the Bradley.Manning user profile, that video was
4 present.

5 Q. Can you explain that, please? You said within the
6 Bradley.Manning user profile. Just a little more specificity if you
7 could

8 A. Yes, sir. Within the profile, there's a folder called
9 videos.

10 MJ: In which computer?

11 WIT: I'm sorry. Thank you, ma'am. On .22 within the
12 Bradley.Manning use profile, my documents, videos, there was, I
13 think, another folder called Sane and that's where that video was
14 present, was allocated there.

15 ATC[CPT MORROW]: I'm retrieving what's been marked as
16 Prosecution Exhibit 165 for Identification. I'm handing the witness
17 what's been marked as Prosecution Exhibit 165 for Identification.

18 Q. Do you recognize that document?

19 A. Yes, sir.

20 Q. What is it?

21 A. This is a screen shot of the EnCase program, but it's
22 showing the videos, several videos.

23 ATC[CPT MORROW]: Permission to publish, Your Honor?

1 MJ: Go ahead.

2 [There was a brief pause while the assistant trial counsel published
3 the exhibit to the Court and the witness.]

4 Q. Now, when I ask you whether you had seen the Collateral
5 Murder video, what video are you referring to?

6 A. The bottom one, OSC_YouTube-CM.wmv.

7 Q. And approximately how long is that video?

8 A. It's about 17 minutes.

9 Q. Can you describe -- you watched the video, I assume?

10 A. Yes, sir.

11 Q. Can you describe, generally, what it depicted?

12 A. Yes, sir. It starts with an Orwellian quote and then it
13 shows, basically, a battle scene in Iraq and with a commenting, sub-
14 text pointing things out with arrows, things like that.

15 Q. And when was that file created on the computer? When did
16 that file appear on the computer?

17 A. 12 April 2010.

18 Q. And what does that mean essentially?

19 A. That file was copied there on that time and date.

20 Q. And let's look at the middle line of this screen shot. What
21 is the -- Have you watched that video before, the 12 July CD
22 Engagement Zone?

23 A. I have.

1 Q. And did you compare that file to the OSC_YouTube-cm?
2 A. I did.
3 Q. And what was the result of that?
4 A. The 12 July 07 CZ movie, that appears to be the source.
5 It's a much longer video and it appears to be from military aircraft.
6 The source of the movie for the OSC YouTube movie.
7 ATC[CPT MORROW]: Prosecution moves to admit Prosecution
8 Exhibit 165 for Identification into evidence.
9 ADC[CPT TOOMAN]: No objection, ma'am.
10 ATC[CPT MORROW]: And ----
11 MJ: Prosecution Exhibit 165 for Identification is admitted.
12 ATC[CPT MORROW]: And I'm retrieving what's been marked as
13 Prosecution Exhibit 168 for Identification.
14 Q. Agent Shaver, I'm handing you what's been marked as
15 Prosecution Exhibit 168 for Identification. Now, what is that?
16 A. It's a CD, sir.
17 Q. Have you looked at that CD?
18 A. Yes, sir, I have.
19 Q. What is on the CD?
20 A. It's a movie OSC_YouTube-CM.wmv.
21 ATC[CPT MORROW]: Your Honor, the prosecution moves to admit
22 Prosecution Exhibit 168 for Identification into evidence.
23 ADC[CPT TOOMAN]: No objection, ma'am.

1 MJ: Can I see it, please? Prosecution Exhibit 168 for
2 Identification is admitted.

3 ATC[CPT MORROW]: For the remainder of Agent Shaver's
4 testimony, the government is going to request a closed session. I
5 don't know whether defense wants to cross at this point.

6 MJ: You want to cross-examine Agent Shaver right now?

7 ADC[CPT TOOMAN]: Yes, ma'am.

8 MJ: Why don't we go ahead and do that.

9 ADC[CPT TOOMAN]: Thank you.

10 **CROSS-EXAMINATION**

11 **Questions by the assistant defense counsel [CPT Tooman]:**

12 Q. Good afternoon.

13 A. Good afternoon, sir.

14 Q. Agent Shaver, you spoke first about Centaur logs?

15 A. Yes, sir.

16 Q. So let's focus on that. Now, you talked about a number of
17 gaps in those logs, correct?

18 A. Yes, sir.

19 Q. So when there is a gap in the logs, you don't see any
20 activity?

21 A. Correct.

22 Q. Now, is it possible that when there's a gap in the log that
23 could be because the SIPRNET was down?

1 A. The entire SIPRNET?

2 Q. Or a particular user's access to SIPRNET?

3 A. Sure.

4 Q. Okay. And if that were the case, the user wouldn't have
5 the ability to transfer any data?

6 A. Correct.

7 Q. And if a user didn't have SIPRNET access, again, Centaur
8 logs wouldn't catch anything, correct?

9 A. No.

10 Q. And they wouldn't be able to do anything with their SIPRNET
11 machine?

12 A. Yes, sir.

13 Q. Now, with respect to the Centaur logs, there was no
14 activity in November of 2009 that was large enough to have
15 transferred a video, correct?

16 A. Correct.

17 Q. The same is true in December of 2009?

18 A. Correct.

19 Q. Now, let's transition to the Department of State firewall
20 logs you spoke about?

21 A. Yes, sir.

22 Q. Now, a firewall would stop an individual who doesn't have
23 access, correct? `

1 A. Correct.

2 Q. So if a user has access to the Department of State server,
3 the firewall is going to let him through?

4 A. Correct.

5 Q. And if they don't have access, the firewall is going to
6 stop them?

7 A. Correct.

8 Q. Now, those firewall logs were pretty bare bones, weren't
9 they?

10 A. Yes, sir.

11 Q. All they really captured were a date and a time?

12 A. And a number connection, yes, sir.

13 Q. So you get a date and a time?

14 A. Yes. Q You get a number of connections and you'd get the
15 source IP?

16 A. Correct.

17 Q. And the destination IP?

18 A. Correct.

19 Q. And the Department of State left a lot on the table as far
20 as the other data they could have captured, correct?

21 A. Left a lot?

22 Q. The firewall log could have captured more data?

1 A. I'm not sure about that firewall, but other firewalls could
2 have.

3 Q. Okay. What other types of information can firewall logs
4 catch?

5 A. They capture lots of things, like files transfer, amount of
6 data transferred, things like that.

7 Q. And the Department of State firewalls logs weren't set up
8 to do that?

9 A. No, sir.

10 Q. Now, you spoke about the number of connections between the
11 .22 and .40 machine and the Department of State servers and you
12 talked about one where there was -- one day where there were a lot of
13 connections, 149,0000 connections?

14 A. Yes, sir.

15 Q. Now, is it possible that some of those connections were
16 failed connections, there was an attempt and then, ultimately,
17 nothing happened?

18 A. It is possible.

19 Q. Now, if one were to automate that process of connecting to
20 a server, how long would those 149,000 connections take?

21 A. Not very long. It depends on the automation method.

22 Q. Okay. Would it also depend on whether or not data was
23 being transferred?

1 A. Yes, and, of course, you have to worry about your network
2 speed, where you are in the world, are there other issues.

3 Q. So it's possible that 149,000 connections, while a big
4 number, could have happen very quickly?

5 A. Yes.

6 Q. And it's also possible that while those connections are
7 happening, the user of the source IP -- use of the source IP is doing
8 other things?

9 A. Correct.

10 Q. Let's switch to the NIPR computer.

11 A. Yes, sir.

12 Q. the .139 computer. Now, you mentioned that there was no
13 activity before March on that computer. Is that right?

14 A. For that profile, yes.

15 Q. Okay, for that profile. Do you know why that was?

16 A. No, sir.

17 Q. Do you know if that particular machine had been reimaged
18 at all?

19 A. I do not recall.

20 Q. Do you know if that particular machine had been wiped?

21 A. No, sir, not to my knowledge.

22 Q. Do you know if that particular machine had the operating
23 system reinstalled?

1 A. No, sir. I'm sorry, I do not.

2 Q. Now, in your review of that machine, the NIRP machine, did
3 you find any evidence of the WikiLeaks most wanted list on that
4 computer?

5 A. No, sir, I did not.

6 Q. And on that NIRP machine, where was that physically
7 located?

8 A. I was told it was in the SCIF in the common area.

9 Q. So out in the open?

10 A. Yes, sir.

11 Q. Where people would be walking by?

12 A. Presumably so, yes, sir.

13 Q. Now, you spoke about web browsers and browsing history?

14 A. Yes, sir.

15 Q. Are you aware of any restrictions on setting your computer
16 up to do private browsing?

17 A. On the Army computers for Internet Explorer, that was not a
18 option. But I don't know of any prohibitions from it for other
19 browsers.

20 ADC[CPT TOOMAN]: One moment please, Your Honor. That's all.

21 MJ: Thank you. Redirect?

22 ATC[CPT MORROW]: No, Your Honor.

23 MJ: Agent Shaver, I have a couple of questions.

1 EXAMINATION BY THE COURT-MARTIAL

2 Questions by the military judge?

3 Q. I just want to make sure I understood your answer to the
4 last question. Are you saying that on the NIPR computer a user
5 couldn't do private browsing?

6 A. Correct, ma'am. The NIPRNET computer .139 only had the
7 Internet Explorer browser and that feature for private browsing was
8 not available for a user.

9 Q. Oh, so when you're talking about private browsing, you're
10 talking about the Internet history, not browsing for personal
11 reasons?

12 A. Correct.

13 Q. I misunderstood you. Give me a second.

14 A. Yes, ma'am.

15 Q. I believe you testified earlier that you saw the Wget
16 downloaded from the .139 computer and then several hours later saw it
17 on the .22 computer?

18 A. Correct.

19 Q. What are possible ways that a user could transfer a Wget
20 program from the .139 computer to the .22 computer?

21 A. Most logical is burn a CD.

22 Q. Do SIPRNET computers like .22, just regular CDs that go on
23 NIPRNET computers, they take the same kinds of CDs?

1 A. Yes, ma'am.

2 Q. We spoke earlier that 149,000 connections could happen
3 quickly. Now, is that for any user or a user using some special
4 automated program?

5 A. It would appear just a volume. It was some kind of
6 automated tool, something that made a repetitive task fast.

7 Q. If a user did not have an automated tool, could a user make
8 149,000 connections in one day?

9 A. Maybe if they're really dedicated, ma'am. They would be
10 clicking a lot.

11 Q. On the Centaur logs where there was no activity -- was
12 there no activity -- did you look and see if there were activities to
13 the computer on the day or the nightshift?

14 A. There was no activity at all.

15 Q. No activity at all?

16 A. Correct.

17 A. Did you look at whether there was activity on the day
18 versus the nightshift?

19 A. It would just show up as activity as in a day. So if there
20 was activity, you would have to look at the times to determine, but
21 we just said show everything you have for -- everything you had for
22 the entire time period. And this is what they gave us. So if it was
23 there, it would be there. It was both day or nightshift.

1 Q. And I believe you answered in response to a defense
2 question of one thing that could cause a gap in the Centaur logs
3 would be that the user's SIPR was down.

4 A. SIPRNET was down, if there's a network issue, yes, ma'am.

5 Q. What other possible causes could there be?

6 A. The Centaur failed. Again, big network issues.

7 Q. And then the 139 NIPR you testified there was no activity
8 before March of 2010 for the Bradley.Manning user profile?

9 A. Correct.

10 Q. Did you see if there was activity before March for any of
11 the other user profiles?

12 A. I don't recall, ma'am.

13 MJ: Any follow up based on mine?

14 ATC[CPT MORROW]: One more question, Your Honor.

15 **REDIRECT EXAMINATION**

16 **Questions by the assistant trial counsel [CPT MORROW]:**

17 Q. Agent Shaver, you talked to me about a number of reasons
18 for gaps in the Centaur data. But based on your analysis of all the
19 information you've seen in the case, all the logging information,
20 Department of State logs, IntelLink logs, et cetera, what is the most
21 likely reason for the gap in Centaur data?

22 A. The Centaur failed.

23 ATC[CPT MORROW]: Thank you.

RE CROSS-EXAMINATION

Questions by the assistant defense counsel [CPT TOOMAN]:

Q. Now, Agent Shaver, you talked about - we've talked about private browser and Internet Explorer. Now, on the NIRP machine, the only web browser on that was Internet Explorer, correct?

A. Yes.

Q. On other machines, the .22 machine or the .40 machine there's Firefox?

A. Correct.

Q. And in Firefox one of the options is private browsing?

A. Correct.

Q. And that's not an option with Internet Explorer?

A. Not in that version, correct.

Q. But when it is an option, there's nothing that would prevent a user from employing private browsing, correct?

A. I don't know how the Army does it now, but at that time that feature was not available. So it was an older browser. I don't know ----

MJ: Are you speaking of Internet Explorer or Firefox?

WIT: Yes, ma'am. Internet Explorer, it was an older browser version and I don't believe that was a present as an option.

Q. Let me clarify. The Firefox on those computers, private browsing was an option within Firefox?

1 A. Yes.

2 Q. And there was nothing that would have prevented a user from
3 employing private browsing on Firefox?

4 A. That is correct.

5 Q. Now, you talked about Wget and how it would have gotten on
6 the .22 machine. When it was put on the 22 machine, it was put on
7 there as an executable file, correct?

8 A. Correct.

9 Q. So that means it wouldn't have gone into the program list?

10 A. It could have.

11 Q. How would a user get into the program list?

12 A. You would need administrative privileges to put it there.

13 Q. So if it wasn't in the program list -- well, you would
14 needed administrative privileges to do that?

15 A. To put it there, yes.

16 Q. So if you wouldn't have -- if a person didn't have
17 administrative rights, they would pretty much have to put it on their
18 desktop?

19 A. Correct.

20 Q. Or they could run it from the disk?

21 A. Correct.

22 Q. And you don't know whether or not that process was
23 authorized within the S-2 section of 2-10 Mountain?

1 A. I'm sorry?

2 Q. The process of placing an executable file on the desktop?

3 A. No, sir. I have no knowledge of that.

4 Q. Now, you testified that in all likelihood the gaps in the
5 Centaur logs would have been caused by Centaur itself just being
6 down?

7 A. Correct.

8 Q. So that wouldn't have anything to with any action by PFC
9 Manning?

10 A. Correct.

11 ATC[CPT MORROW]: Thank you, Agent Shaver.

12 WIT: Yes, sir.

13 MJ: Let me ask one follow up based on that to make sure I
14 understand your testimony.

15 **EXAMINATION BY THE COURT-MARTIAL**

16 **Questions by the military judge:**

17 Q. So the Wget, to be on the SIPR computer, when does it
18 require administrative privileges?

19 A. To run it, you don't need that. You don't have to have
20 administrative privileges to run it. But if you were going to put it
21 in the common area, the program files where all the other programs
22 such as Office reside, you need a privilege to put a file there.

23 Q. So a user could run Wget on his computer by CD or desktop?

1 A. Correct.

2 MJ: Any follow up based on that?

3 ATC[CPT MORROW]: No, Your Honor.

4 ADC[CPT TOOMAN]: No, ma'am.

5 MJ: All right. Are we ready to move into closed session?

6 TC[MAJ FEIN]: Yes, ma'am. The United States requests the Court
7 for a closed session pursuant to the Court's previous order what has
8 been marked as Appellate Exhibit 550. The Court is ordered to close
9 certain proceedings dated 21 May 2013, to elicit very specific
10 testimony from Special Agent Shaver in reference to Specification 3
11 of Charge II and only Specification 3 of Charge II.

12 MJ: Approximately how long does the government anticipate this
13 session will last?

14 TC[MAJ FEIN]: Your Honor, the government's case and the
15 defense's case and any questions from the Court, no more than max 30
16 minutes. Likely, less time.

17 MJ: All right. Will you need a recess to put any measures in
18 place?

19 TC[MAJ FEIN]: Yes, ma'am. The United States requests a 20-
20 minute recess in order to institute the correct measures, swap out
21 the court reporter equipment.

22 MJ: All right. Is there anything else that we need to address
23 before we have the recess?

1 TC[MAJ FEIN]: No, ma'am.

2 ADC[CPT TOOMAN]: No, ma'am.

3 MJ: All right. Members of the gallery and the public, the court
4 is going to close this portion of the trial pursuant to the Court's
5 earlier findings under Rule for Court-Martial 806. We are also going
6 to have a brief reopening of the public portion of the trial after
7 the closed session. Based on what Major Fein has proffered to me,
8 I'm thinking that's going to take place roughly around 4:00 o'clock
9 or 1600. Does that sound about right?

10 TC[MAJ FEIN]: Yes, ma'am.

11 ADC[CPT TOOMAN]: Yes, ma'am.

12 MJ: All right. We may need to be a little bit flexible. I
13 can't say with actual precision when it's going to occur, but that's
14 going to be the target range. So court is in recess for 20
15 minutes.

16 **[The court-martial recessed for a closed session hearing at 1454, 26**
17 **June 2013.]**

18 **[END OF PAGE]**

Pages 9185 through 9198 of this transcript are classified “SECRET”. This session (26 June 2013, Session 1) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

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1 [The court-martial was called to order at 1507, 26 June 2013.]

2 MJ: Court is called to order. We are in closed session,
3 however there are people in the gallery. It is--and the witness is
4 back on the witness stand. Major Fein, would you like to describe,
5 for the record, who is here?

6 TC[MAJ FEIN]: Yes, ma'am. Ma'am, all parties when the court
7 last recessed are again present, including the Court's paralegal, the
8 bailiff, Mr. Prather, the defense security experts, military police,
9 U.S. government officials, and the defense--or, excuse me, the
10 prosecution security expert and paralegal. Also, this session is
11 classified at the SECRET level. And, prior to this session
12 beginning, the court security officer filled out the checklist which
13 will be filed with the allied papers with the Court--or in the
14 record, excuse me.

15 MJ: All right. Before we begin, let me ask a question.
16 Obviously, my NIPR computer is not present and I normally take notes
17 via automation, so I now have a white pad for notes. What is the
18 current plan for my notes? How will they be marked if necessary?

19 TC[MAJ FEIN]: Yes, ma'am, the court security officer will
20 control your notes, Your Honor--the Court's notes and be able to have
21 them reviewed as necessary to ensure that, if there is classified
22 information, it is properly marked and if there is not, then to

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1 notify the Court so the Court can--you may use your notes freely on
2 your NIPR machine.

3 MJ: All right. And I assume both sides--their security
4 officers have a procedure in place to ensure that your written work
5 product has the same procedural reviews?

6 ADC[CPT TOOMAN]: Yes, ma'am.

7 TC[MAJ FEIN]: Yes, ma'am.

8 MJ: Is there anything else we need to address before we
9 proceed?

10 TC[MAJ FEIN]: No, ma'am.

11 ATC[CPT MORROW]: No, Your Honor. I just want to make the court
12 aware I'm going to ask a number of foundational questions that we'll
13 repeat when we're--I'll repeat from when we were in open session just
14 so that it will be the same--that everyone will understand where I'm
15 going, essentially.

16 MJ: All right. And, once again, Government, you have a
17 position--a system in place, now, for doing a transcript and a
18 classified review of this session pursuant to----

19 TC[MAJ FEIN]: Yes, ma'am, and----

20 MJ: ----the plan you presented me?

21 TC[MAJ FEIN]: Yes, ma'am, and when we go into open session, the
22 United States will offer to repeat that plan on the open session.

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1 MJ: All right.

2 REDIRECT EXAMINATION

3 Questions by the assistant trial counsel [CPT MORROW]:

4 Q. Agent Shaver, I'd like to discuss log files collected from
5 the Central Intelligence Agency. Did you examine those log files?

6 A. Yes, sir, I did.

7 Q. And what exactly was collected by CCIU?

8 A. There was two sets of log files; one for the Open Source
9 Center and one for the

10 Q. And let's--in this session, let's talk about the
11 [redacted] log files. Do you recall whether PFC Manning had
12 an account that would have allowed him access to the

13 [redacted] ?

14 A. Yes, sir, he did.

15 Q. And what was that account name?

16 A. It was "bradley.e.manning."

17 Q. And what kind of information was captured in the
18 audit log files?

19 A. Dates and times, user account, the IP address, files--
20 requested files viewed.

21 Q. And when you say, "files viewed," did it have the file
22 name? How was the file--do you----

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1 A. It----

2 Q. ----how does it appear in the log files?

3 A. It would say, "File viewed" and have the file name.

4 Q. I'm retrieving what's been marked as Prosecution Exhibits
5 166 and 167 for identification. I'm showing the defense counsel.
6 I'm handing the witness what's been marked as Prosecution Exhibits
7 166 and 167 for identification. Can you take a look at those,
8 please?

9 A. [Examining PE 166 and 167 for ID.] Yes, sir.

10 Q. Now, do you recognize those documents?

11 A. Yes, sir, I do.

12 Q. And what are they?

13 A. They're

14

15 ATC[CPT MORROW]: Permission to publish, Your Honor?

16 MJ: Go ahead.

17 [The assistant trial counsel published PE 167 for identification on
18 the overhead.]

19 Q. Agent Shaver, I'm just going to show you the first page of
20 the document that was marked "Confidential."

21 MJ: And that's Prosecution Exhibit--what?

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1 ATC[CPT MORROW]: That is Prosecution Exhibit 167 for
2 identification.

3 [Examination of the witness continued.]

4 Q. So, Agent Shaver, you said you--the file that was viewed in
5 the log files had a title or something or at least had a name. Can
6 you describe that, please?

7 A. Yes, sir, it was a series of letters and numbers, but it
8 wasn't, like, a common name like, in this case, like
9 it was a bunch of numbers.

10 Q. Okay. And what is the title of this document?

11 A.

12
13 Q. Now, did you see--did you observe the user account
14 associated with PFC Manning access this document on the

15 A. Yes, sir.

16 MJ: And what--approximately what time frame, do you recall?

17 A. No, sir, I don't; it was March 2010.

18 ATC[CPT MORROW]: Okay. I'm now publishing what's been marked
19 as Prosecution Exhibit 166 for identification.

20 Q. And what's the title of this document?

21 A.

22

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1 Q. And, again, when you--did you see this document accessed in
2 the logs?

3 A. I did, sir.

4 Q. And how did the document appear in the logs,
5 themselves?

6 A. It was not named--it was named with numbers and some
7 letters, but nothing like or anything like that.

8 ATC[CPT MORROW]: I am removing the first page of Prosecution
9 Exhibit 166 for identification from the ELMO.

10 Q. Agent Shaver, now, you said you saw both of these documents
11 accessed by the Bradley Manning user account in the logs, is
12 that correct?

13 A. Yes, sir.

14 Q. Did you see any evidence on any other machines or on any
15 other log files that suggested that these documents were placed on
16 some other piece of media associated with PFC Manning?

17 A. Yes, sir. Within .22, in the bradley.manning user profile,
18 files with--named appeared in several locations.

19 ATC[CPT MORROW]: I'm retrieving what's been marked as
20 Prosecution Exhibit 154 for identification--154. I'm showing the
21 defense counsel.

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1 Q. Agent Shaver, I'm handing you what's been marked as
2 Prosecution Exhibit 154 for identification. Do you recognize that
3 document?

4 A. Yes, sir.

5 MJ: And what is it?

6 A. This is a document I created. This is a summary--this is
7 an excerpt of the Intelink--or, excuse me, an excerpt of the
8 index.dat file from the bradley.manning user profile from the .22
9 computer.

10 Q. Now, the index.dat file is a large file, is that correct?

11 A. Yes, sir.

12 Q. How is this particular document created?

13 A. Sir, I filtered on the and
14 also on the keyword "blah.zip."

15 ATC[CPT MORROW]: Permission to publish, Your Honor?

16 MJ: Go ahead.

17 [The assistant trial counsel published PE 154 for identification on
18 the overhead.]

19 Q. Agent Shaver, I'd just like you to sort of describe, if you
20 could, line-by-line the activity you're observing in the index.dat
21 file.

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1 A. Yes, sir. The first line I've got March 17th, 2010, the
2 user account bradley.manning visited the file--that means it's
3 physically located on the computer--and there is a path, documents
4 and settings, bradley.manning, desktop,

6 Q. So where was this document located on March 17th, 2010?

7 A: This document was located on the desktop of the user
8 profile bradley.manning.

9 Q. Now, describe this migration in the lines below that,
10 please.

11 A. Yes, sir. The next entry is on 21 March. It's now in--
12 from the desktop, it is moved to the "My Documents" folder. And
13 another file has joined it: [REDACTED] on the third
14 line down; that's March 21st. And then the--on March 22nd, the
15 folder "Blah" is now present and the two documents reside in the
16 bradley.manning user profile--the "My Documents\Blah" folder. And
17 then on--a little later on March 22nd, as well, another folder called
18 "Interesting" is introduced. So it's now--the files now exist on the
19 .22, the bradley.manning user profile, in "My
20 Documents\Blah\Interesting." And then the last entry, on 22 March,
21 is that a file called "Blah.zip" is created and you note that the

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1 line--the second to the bottom line, the time is 13:37:11 and then at
2 13:37:45, the file "Blah.zip" is present.

3 Q. Now, I want to talk about "Blah.zip." Where else have you
4 seen "Blah.zip" in this case? What other--on what other piece of
5 media have you seen "Blah.zip" in this case--or evidence that
6 "Blah.zip" may have been present on another computer?

7 A. Correct, sir. I believe it was on the--PFC Manning's
8 personal Macintosh.

9 Q. Can you describe where it was on the personal Macintosh--or
10 if it--I mean, was the file actually there, or was it just evidence
11 that the file may have been there?

12 A. The file name was there on a mounted volume.

13 Q. What do you mean by "mounted volumes"?

14 A. I believe Mr. Johnson has testified, too, that CDs were
15 created on the .22 computer, they were named--tiers, date--tiers--the
16 date convention and that file was found in that path--that unique
17 path on the personal computer.

18 ATC[CPT MORROW]: Your Honor, the prosecution moves to admit
19 Prosecution Exhibit 154 for identification into evidence.

20 ADC[CPT TOOMAN]: No objection, ma'am.

21 ATC[CPT MORROW]: Prosecution also moves to admit Prosecution
22 Exhibits 166 and 167 for identification into evidence.

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1 ADC[CPT TOOMAN]: No objection, Your Honor.

2 MJ: All right. May I see them, please? [Receiving PE 154,
3 166, and 167 for identification.] Prosecution Exhibits 166, 167, and
4 154 for identification are admitted. And before we proceed, is there
5 any issue with saying that these exhibits, by number, have been
6 admitted in open session?

7 TC[MAJ FEIN]: No, ma'am, however, since you asked, there does
8 need to be a change at the end of this closed session with what's
9 been marked on the actual prosecution exhibit list and we'll make
10 that change with the court reporter. The term is used and
11 we should----

12 MJ: Okay.

13 ATC[CPT MORROW]: Thank you, Agent Shaver.

14 WIT: Yes, sir.

15 **REXCROSS EXAMINATION**

16 **Questions by the assistant defense counsel [CPT TOOMAN]:**

17 Q. Agent Shaver.

18 A. Sir.

19 Q. Now, Agent Shaver, you reviewed the
20 and the open source logs, correct?

21 A. Yes, sir.

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1 Q. And, in your review of those logs, you saw activity beyond
2 just for these documents, correct?

3 A. Yes, sir.

4 Q. In fact, you saw a number of searches related to things in
5 Iraq, correct?

6 A. Yes, sir.

7 Q. And nothing in your review of this evidence suggested to
8 you that WGET was ever used with respect to open source?

9 A. Correct.

10 Q. And, in your opinion, could open source--could a user have
11 employed WGET on the open source website?

12 A. I did not have an account, so I don't know. Sorry.

13 ADC[CPT TOOMAN]: Okay. Thank you, Agent Shaver.

14 MJ: Redirect?

15 ATC[CPT MORROW]: No, Your Honor.

16 MJ: All right. Agent Shaver, I have a couple of questions for
17 you.

18 **EXAMINATION BY THE COURT-MARTIAL**

19 **Questions by the military judge:**

20 Q. When you found these--Prosecution Exhibit 166 and 167, the
21 two documents--

22 A. Yes, ma'am.

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1 Q. ----were you able to tell, when they were on the Bradley
2 Manning user profile, where they came from?

3 A. No, ma'am, but I can see the file names were there and then
4 to look at the log files--the OSC logs, excuse me, the
5 would show that the files were viewed and once they are viewed, they
6 would be presented to your computer and it would be easy to File,
7 Save As.

8 Q. But the files were reviewed from where?

9 A. They were on the .22 and the logs capture that.

10 Q. And were you involved the NIPRNET computer that was in the
11 supply room?

12 A. .19?

13 Q. I don't know.

14 ATC[CPT MORROW]: Yes, Your Honor, the IP address is .19.

15 MJ: Yes.

16 A. I--no, ma'am, I was--as a supervisor, I reviewed Al
17 Williamson's report, but I did not do the--conduct the examination.

18 MJ: Thank you.

19 WIT: Yes, ma'am.

20 MJ: Any follow-up based on that?

21 ATC[CPT MORROW]: No, Your Honor.

22 ADC[CPT TOOMAN]: No, ma'am.

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1 MJ: All right. Is there anything else we need to do in closed
2 session?

3 ATC[CPT MORROW]: No, Your Honor.

4 ADC[CPT TOOMAN]: No, Your Honor.

5 MJ: Okay. Well, I told everybody we're going to be starting at
6 1600, so why don't we go ahead and take a recess until 1600 and then
7 come back into court?

8 TC[MAJ FEIN]: Yes, ma'am, and we also--may we have a short 802
9 prior to that to talk about tomorrow's schedule?

10 MJ: Certainly. What time do you want to do it?

11 TC[MAJ FEIN]: Maybe a quarter till, ma'am?

12 MJ: Okay. That works. Are we going to have the witness back
13 for the open session?

14 TC[MAJ FEIN]: Yes, ma'am.

15 ATC[CPT MORROW]: We do, Your Honor; I need to ask a few more
16 questions about the Open Source Center logs in an open session.

17 MJ: All right.

18 [The witness was duly warned, temporarily excused, and withdrew from
19 the courtroom.]

20 MJ: Anything else we need to do at this time before we recess
21 the closed session?

22 TC[MAJ FEIN]: No, ma'am.

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- 1 MJ: All right. I notice, now, it's--again, it's 1525. Court
2 is in recess.
3 [The court-martial recessed at 1524, 26 June 2012.]

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1 [The court-martial was called to order at 1607, 26 June 2013.]

2 MJ: Court is called to order. Let the record reflect the
3 gallery is open. The spectators have returned. The witness is on
4 the witness stand. Major Fein?

5 TC[MAJ FEIN]: Ma'am, all parties when the Court last recessed
6 are again present with the exception of Captain Overgaard. Also,
7 Your Honor, based off of this closed-session, and the government's
8 proposal under 548 in order to transcribe -- swiftly transcribe the -
9 - any closed sessions that we have that the government will
10 expeditiously prepare a transcript of this testimony and conduct an
11 appropriate classification review of the transcript. The
12 organizations involved for doing the classification review are
13 standing by and once the transcript is completed, which we estimate
14 to only take one full duty day it will be given to the parties for
15 authentication, once authenticated -- or once reviewed whether
16 authenticated or not by the Court it will then be sent to the
17 organizations for the classification review.

18 MJ: All right. Thank you. Any issues?

19 CDC[MR. COOMBS]: No, Your Honor.

20 MJ: All right. Anything else we need to address before we
21 proceed with direct examination of the witness?

22 TC[MAJ FEIN]: No, ma'am. I guess just one follow on. After
23 the classification review according to the government's proposal then

1 a redacted unclassified version of the transcript will be released
2 both here physically in the courthouse and also on the Department of
3 the Army website.

4 MJ: All right. Thank you. Captain Morrow?

5 **REDIRECT EXAMINATION**

6 **Questions by the assistant trial counsel [CPT Morrow]:**

7 Q. Agent Shaver, I have a couple more questions for you. I'd
8 like to discuss the log files collected from the Central Intelligence
9 Agency. Did you examine those log files in this case?

10 A. Yes, sir, I did.

11 Q. And what exactly was collected by CCIU?

12 A. There was two sets of logs collected. First would be Open
13 Source Center or OSC and then the second one a set of logs called
14 Wire Logs.

15 Q. And what is the Open Source Center?

16 A. Sir, that is a website. It has Open Source stuff. So web
17 documents, transcripts, television shows, things like that.

18 Q. And do you know whether PFC Manning appeared to have an
19 Open Source Center account?

20 A. Yes, sir. There were two actual accounts.

21 Q. And what was the user name of the accounts?

22 A. B. Manning was the first one and the second one was
23 Bradass87.

1 Q. Now, what kind of information was captured in the logs for
2 the Open Source Center?

3 A. The user name, the date and time, files searched for and
4 files viewed.

5 Q. Can you just describe, generally, the activity you observed
6 for the Bradass87 user account?

7 A. The first day of log files for that account were February
8 20th, 2010. There were a number of searches and files viewed. There
9 were searches for WikiLeaks, Iceland and other things as well.

10 Q. And do you recall how many total searches for WikiLeaks
11 that you observed in the log files you examined?

12 A. Sir, there were over 20.

13 Q. And what about total searches? Approximately how many
14 totals searches for Iceland?

15 A. Approximately 25, sir.

16 Q. And do you recall the first search for WikiLeaks in the
17 Open Source Center logs?

18 A. Yes, sir. It was on the first day, so February 20th, 2010.

19 Q. And what about the first search for Iceland?

20 A. Same thing, sir.

21 ATC[CPT MORROW]: Thank you, Agent Shaver.
22
23

RECROSS-EXAMINATION

Questions by the assistant defense counsel [CPT TOOMAN]:

Q. Agent Shaver.

A. Sir.

Q. The first search in the Open Source Center by PFC Manning's user account was on 20 of February, correct?

A. Yes, sir.

Q. Nothing before January?

A. Correct.

Q. Nothing in December? And PFC Manning's user account also searched for things related to Iraq, correct?

A. Yes, sir.

Q. And he did that quite a bit?

A. Yes, sir, he did.

ADC[CPT TOOMAN]: Thank you.

MJ: Redirect?

ATC[CPT MORROW]: No, Your Honor.

EXAMINATION BY THE COURT-MARTIAL

Questions by the military judge:

Q. Special Agent Shaver, someone from a user account like in this case goes and searches for, say, WikiLeaks and then pulls up something in the search, are these logs able to track that?

1 A. Yes, ma'am. It will actual say 'file viewed.' It will
2 actually say the words 'file viewed.'

3 Q. If they go into the file further?

4 A. If they open the file, yes.

5 Q. Is the -- are the logs able to track that?

6 A. Yes.

7 Q. When PFC Manning searched for WikiLeaks, what did he find?

8 A. Documents pertaining to the WikiLeaks site. I don't recall
9 what files he viewed. I just looked for searches. But it's Open
10 Source Center stuff. So it would have been stuff readily available
11 on the web.

12 Q. So let me just make sure I understand your testimony. The
13 logs track what the user views. So if the user opens something with
14 a search term and viewed it, the log would tell you what it was that
15 they reviewed?

16 A. Yes, ma'am.

17 Q. And in this particular case, you just don't remember what
18 the logs say?

19 A. Pertaining to?

20 Q. To the search for WikiLeaks.

21 A. Correct.

22 MJ: Okay. Any follow up based on that?

23 ATC[CPT MORROW]: No, Your Honor.

1 ADC[CPT TOOMAN]: No, ma'am.

2 MJ: Temporary or permanently excused?

3 ATC[CPT MORROW]: Temporary, Your Honor.

4 MJ: Did the government want to state in the open court what

5 exhibits were admitted?

6 ATC[CPT MORROW]: Absolutely, Your Honor. Prosecution

7 Exhibits 154, 166, and 167 were admitted.

8 MJ: All right. Temporarily excused.

9 **[The witness was temporarily excused, duly warned, and withdrew from**

10 **the courtroom.]**

11 MJ: Other than by number, is there any way to label those

12 exhibits in open court?

13 ATC[CPT MORROW]: One moment, Your Honor. Your Honor, the

14 plan is to identify those exhibits by Bates number. We'll do that

15 tomorrow in open court.

16 MJ: All right. Is there anything else we need to address today

17 other than timing and scheduling?

18 TC[MAJ FEIN]: No, ma'am.

19 CDC[MR. COOMBS]: No, ma'am.

20 MJ: The parties have talked to me about tomorrow's scheduling.

21 They are going to be arriving at additional stipulations of expected

22 testimony and they need some time to do that. So we are going to

23 recess court today and beginning tomorrow at 1200, at noon, to allow

1 the parties to continue to do what they need to do to get those
2 stipulations of expected testimony and I believe that's all we need
3 to discuss with respect to scheduling. Is that correct?

4 TC[MAJ FEIN]: Ma'am, it's just mostly for the general public's
5 awareness that we will not take a lunch recess tomorrow. So we'll
6 start at noon and move forward.

7 MJ: Okay. So we'll all have eaten lunch before we start.
8 Anything else we need to address?

9 TC[MAJ FEIN]: No, ma'am.

10 CDC[MR. COOMBS]: No, Your Honor.

11 MJ: All right. Court is in recess until noon tomorrow.

12 [The court-martial recessed at 1615, 26 June 2013.]

13 [END OF PAGE]

1 [The court-martial was called to order at 1206, 27 June 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties when the
5 Court last recessed are again present with the addition of Captain
6 Overgaard. Also, ma'am, as of the start of this session there are
7 ten members of the media at the media operations center, one
8 stenographer, no media in the courtroom, spectators in the courtroom
9 and there's one spectator in the overflow trailer. The rest of the
10 trailer is available and the theater will be, if needed.

11 MJ: All right. Thank you. Defense, before we begin, I wanted
12 to ask you in the Court's copy, may I see the Defense Motion for
13 Judicial Notice of WikiLeaks Publications of 9-11 pager messages? I
14 think that's Appellate Exhibit, it's either 569, 570, or 571. May I
15 see whichever one it is?

16 CDC[MR. COOMBS]: It should be 571, Your Honor.

17 MJ: All right. Just so everyone knows, I'm looking at
18 Paragraph 1, it talks about the text and pager messages sent on 11
19 September 2011, and then the footnote says 2001. Is the 2011 a typo?

20 ADC[CPT TOOMAN]: Yes, ma'am, it is.

21 MJ: So it should be 2001?

22 ADC[CPT TOOMAN]: Yes, ma'am.

1 MJ: So for the record in Paragraph 1, of relief sought, right
2 at the end of the sentence it says messages sent on 11 September
3 2001. You want to just go ahead and change it and initial it?

4 ADC[CPT TOOMAN]: Yes, ma'am, thank you.

5 MJ: The Court notes that the exhibit has been changed to 2001
6 and signed by Captain Tooman or initialed by Captain Tooman. All
7 right. The Court is prepared to rule on both motions for judicial
8 notice. Defense Requested Judicial Notice-On 15 June 2013, the
9 Defense filed 3 motions for judicial notice Appellate Exhibits 569
10 through 571 requesting the Court take judicial notice of the
11 following adjudicative facts:

12 The 13 October 2010, classification assessment conducted by
13 Rear Admiral Kevin Donegan, Director of Operations at CENTCOM,
14 regarding the Apache Video Prosecution Exhibit 15.

15 Two: The audio transcript for Prosecution Exhibit 15.

16 Three: On or about 25 November 2009, WikiLeaks published
17 what it claimed to be text and pager messages sent on 11 September
18 2001. The Defense does not request the Court to take judicial notice
19 of the messages themselves or that the messages are actually from 11
20 September 2001.

21 Four: On 25 July 2007, Reuters made a FOIA request to DoD
22 for video and audio recordings relating to the deaths of Mr. Namir
23 Noor-Eldeen and Mr. Saeed Chmagh, Reuters journalists. CENTCOM

1 responded to the Reuters request on 24 April 2009. On 19 June 2013,
2 the Government filed a brief opposing 1, 2, and 4 above Appellate
3 Exhibit 574. After oral argument, the Government revised its
4 position and did not object to 2, 3, and 4 above. The parties
5 stipulate that Enclosure 2 to Appellate Exhibit 574 is an accurate
6 transcript of the audio of Prosecution Exhibit 15. The Government
7 objected to the classified -- to the classification assessment in 1
8 as hearsay not admissible as a statement of a party opponent under
9 M.R.E. 802(d)(2)(D). The Court will grant Judicial Notice for 2, 3,
10 and 4. The only remaining issue regarding the Defense motions for
11 judicial notice is whether the Court will take judicial notice of
12 Number 1.

13 Government requests for Judicial Notice: On 25 June 2013,
14 the Government filed a motion for Judicial Notice corrected copy at
15 Appellate Exhibit 576 moving the Court to take notice of the
16 following adjudicative facts: Adjudicative Facts: WikiLeaks
17 Releases

18 a. WikiLeaks released a video titled "Collateral Murder"
19 on 5 April 2010;

20 b. WikiLeaks released more than 390,000 records from the
21 Combined Information Data Network Exchange (CIDNE) Iraq database on
22 22 October 2010;

1 c. WikiLeaks released more than 75,000 records from the
2 CIDNE Afghanistan database on 25 July 2010;

3 d. WikiLeaks released more than 700 detainee assessments
4 produced by Joint Task Force Guantanamo (JTF-GTMO) on 25 April 2011;

5 e. WikiLeaks released a memorandum produced by the Army
6 Counterintelligence Center titled "Wikileaks.org-An Online Reference
7 to Foreign Intelligence Services, Insurgents, or Terrorist Groups?"
8 on 15 March 2010;

9 Adjudicative Facts: Salary of Servicemembers and Government
10 Employees

11 f. The monthly base salary for Servicemembers at the rank
12 of Specialist, E-4, was \$1,502.70 in 2003, \$1,558.20 in 2004,
13 \$1,612.80 in 2005, \$1,662.90 in 2006, \$1,699.50 in 2007, \$1,758.90 in
14 2008, \$1,827.60 in 2009, and \$1,889.70 in 2010;

15 g. The yearly base salary for government employees at the
16 grade of 12 on the General Schedule scale was \$51,508 in 2003,
17 \$52,899 in 2004, \$54,221 in 2005, \$55,360 in 2006, \$56,301 in 2007,
18 \$57,709 in 2008, \$59,383 in 2009, and \$60,274 in 2010;

19 Adjudicative Facts: Reference Materials:

20 h. The existence of Army Regulation 25-1, dated 13
21 November 2007, specifically Paragraphs 1-1, subparagraphs (a) and (b)
22 of 1-7, and subparagraphs (d), (e), and (f) of 6-1 and the definition
23 of "Information System"; in -- additionally the government's motion

1 said Section 2 of the Glossary of Army Regulation 27-1 and they
2 revised that to say the definition in Army Regulation 27-2. So, the
3 judicial notice requested is -- I'm sorry, 25-2, and that's the
4 current request for judicial notice.

5 i. The existence of Department of Defense, DoD, is that
6 Directive or Instruction?

7 TC[MAJ FEIN]: May I have a moment, Your Honor?

8 MJ: Yes.

9 TC[MAJ FEIN]: Your Honor, DoD 5400.11-R is a DoD Regulation,
10 that's administered under the DoD Directive 5400.11.

11 MJ: Okay. So you are asking me to take judicial notice of the
12 DoD Regulation?

13 TC[MAJ FEIN]: Yes, ma'am.

14 MJ: Not the Directive?

15 TC[MAJ FEIN]: Yes, ma'am, 5400.11-R.

16 MJ: Okay. Does the -R make it a regulation?

17 TC[MAJ FEIN]: Yes, ma'am, this is a regulation.

18 MJ: All right. So, that's -- It's a DoD -- what you want me to
19 take judicial notice is entitled DoD 5400.11-R?

20 TC[MAJ FEIN]: Yes, ma'am.

21 MJ: Okay.

22 TC[MAJ FEIN]: The Department of Defense Privacy Program, dated
23 May 14th 2007.

1 MJ: Okay. Specifically Appendix 1 and the definition of
2 "Personal Information;" Adjudicative Facts: Miscellaneous
3 j. Thanksgiving of 2009 occurred on 26 November 2009;
4 k. The term, ".is," is the top level internet domain of
5 Iceland;

6 1. Johanna Sigurdardottir was the Prime Minister of
7 Iceland from February 2009-May 2013; Ossur Skarphedinsson was the
8 Icelandic Minister for Foreign Affairs from February 2009 -May 2013;
9 Albert Jonsson was the Icelandic Ambassador to the United States from
10 2006-2009; and Birgitta Jonsdottir has been a member of the Icelandic
11 parliament since 2009; and

12 m. The Internet chat lingo and their meanings in Enclosure
13 13 are synonymous.

14 On 25 June 2013, the Defense filed a brief objecting to all
15 of the above except j and m on the grounds of relevance. The Defense
16 did not object to j and objected to m as an improper subject for
17 judicial notice. At oral argument, the Defense conceded that a - 1
18 were properly judicially noticed adjudicative facts if relevant.
19 Thus, with the exception of j, all of the Government's motions for
20 judicial notice remain at issue.

21 The Law: Judicial Notice

22 One, Military Rule of Evidence 201 governs judicial notice
23 of adjudicative facts. The judicially noticed fact must be one not

1 subject to reasonable dispute in that it is either (1) generally
2 known universally, locally, or in the area pertinent to the event or
3 (2) capable of accurate and ready determination by resort to sources
4 whose accuracy cannot reasonably be questioned. *US. v. Needham*, 23
5 M.J. 383 (Court of Military Appeals 1987); *US. v. Brown*, 33 M.J. 706
6 (Army Court of Military Review 1991).

7 Two, Military Rule of Evidence 201(c) requires the military
8 judge to take judicial notice of adjudicative facts if requested by a
9 party and supplied with the necessary information.

10 Three, when the military judge takes judicial notice of
11 adjudicative facts, the fact finder is instructed that they may, but
12 are not required to, accept as conclusive any matter judicially
13 noticed.

14 Four, Judicial notice is of adjudicative facts. Judicial
15 notice is not appropriate for inferences a party hopes the fact
16 finder will draw from the fact(s) judicially noticed. Legal arguments
17 and conclusions are not adjudicative facts subject to judicial
18 notice. *US. v. Anderson*, 22 M.J. 885 (Air Force Court of Military
19 Review 1985) (appropriate to take judicial notice of the existence of
20 a treatment program at a confinement facility but not appropriate to
21 take judicial notice of the quality of the program.).

22 The Law: Hearsay.

1 One, hearsay is a statement, other than the one made by the
2 declarant while testifying at the trial, offered in evidence to prove
3 the truth of the matter asserted. M.R.E. 801(c). Hearsay is not
4 admissible except as provided by the Military Rules of Evidence or by
5 any Act of Congress applicable in trials by court-martial. Military
6 Rule of Evidence 802.

7 Two, Admission by a Party Opponent. Military Rule of
8 Evidence 801(d) (2) (D) provides in relevant part that admissions by a
9 Party Opponent are not hearsay if the statement is offered against a
10 party and is a statement by the party's agent or servant concerning a
11 matter within the scope of the agency or employment of the agent or
12 servant made during the existence of the relationship. The contents
13 of the statement shall be considered but are not alone sufficient to
14 establish the declarant's agency or employment relationship and the
15 scope thereof under (D). Consistent with the Court's 18 October
16 2012, Ruling, entitled Defense Motion: Motion for Judicial Notice of
17 Adjudicative facts-Finkel Book and Public statements, Appellate
18 Exhibit 356, the Court adopts the three-part test adopted by the
19 Second Circuit in *United States v. Salerno*, 937 F.2d 797, at 811 (2d
20 Circuit 1991) to determine if the classification assessment by Rear
21 Admiral Donegan qualifies as an admission under M.R.E. 801(d) (2) (D)
22 against the Government and is worthy of judicial notice. That three-
23 part test is -- I'm sorry, that three-part test requires the Court,

1 "[to] be satisfied that the prior [statement] involves an assertion
2 of fact inconsistent with similar assertions in a subsequent trial.
3 Second, the court must determine that the [statements] were such as
4 to be the equivalent of testimonial statements. Lastly, the district
5 court must determine by a preponderance of the evidence that the
6 inference that the proponent of the statements wishes to draw is a
7 fair one and that an innocent explanation for the inconsistency does
8 not exist." *Salerno*, 937 F.2d at 811 (2d Circuit 1991) (quoting
9 *United States v. McKeon*, 738 F.2d 26, at 33 (2d Circuit 1984)
10 (quotations omitted); see also *United States v. DeLoach*, 34 F.3d
11 1001, 1005 (11th Circuit 1994) (adopting the test from *Salerno*). The
12 fact that a statement is admissible against a party opponent does not
13 bind the party to that statement. The party against whom such a
14 statement is made can rebut the statement and assert a different or
15 contrary position. *US. v. Bellamy*, 403 Maryland at 329, footnote 19.

16 The Law: Use of Statements Made by an Accused during the
17 Providence Inquiry in the Merits of the Trial. An accused's guilty
18 plea to a lesser included offense may be used to establish elements
19 of the greater offense during the contested portion of the trial.
20 Statements made by the accused during the providence inquiry, whether
21 orally or in writing, are not evidence that is before the trier of
22 fact and may not be considered during the contested portion of the

1 trial. Rule for Court-Martial 913(a) Discussion; *US. v. Grijalva*, 55
2 M.J. 223 (Court of Appeals for the Armed Forces, 2001).

3 Conclusions of Law: Defense Motion for Judicial Notice of
4 Classified Assessment -- Classification Assessment of Rear Admiral
5 Donegan.

6 One, the Court will not consider any statements made by the
7 accused during the providence inquiry as evidence to support any of
8 the requests for judicial notice.

9 Two, Rear Admiral Donegan's statement meets the *Salerno*
10 test and qualifies as an admission of a patty opponent under M.R.E.
11 801(d)(2)(D). Rear Admiral Donegan was acting in his official
12 capacity as Director of Operations, CENTCOM, when he made the
13 classification assessment. The classification assessment states
14 facts inconsistent with the Stipulation of Expected Testimony of CW5
15 John Larue at Prosecution Exhibit 117. The inference the Defense
16 wishes to draw is a fair one.

17 Three, the Court will take Judicial Notice of the 13
18 October 2010, classification assessment by Rear Admiral Donegan.

19 Government Motion for Judicial Notice. The facts in a
20 through 1 are adjudicative facts capable of accurate and ready
21 determination of by resort to sources whose accuracy cannot
22 reasonably be questioned.

1 WikiLeaks Releases: The Court has already cited those
2 above, although I have them listed in the ruling, I won't read them
3 again.

4 All of the WikiLeaks releases are relevant to show the path
5 of information allegedly from the accused through WikiLeaks with
6 opportunity to access it by the enemy for the Specification of Charge
7 I (Aiding the Enemy) and for the caused to be published element of
8 Specification 1 of Charge II (Wantonly Caused to be Published). In
9 addition a through e are relevant to facts at issue as to whether the
10 accused stole, purloined, or knowingly converted information and
11 whether the information was closely held by the Government for the
12 following specifications of Charge II: a Specification 2; b
13 Specifications 4 and 5; c Specifications 6 and 7; d Specifications 8
14 and 9; and e Specification 15. The government [sic] will take
15 judicial notice of a through e.

16 Adjudicative Facts: Salary of Servicemembers and Government
17 Employees, once again, I read them before when we did the
18 introduction of what the government was seeking judicial notice for.
19 The Court will not read them again. The monthly and yearly base
20 salaries of Servicemembers and government employees in the grade of
21 GS 12 are relevant to a fact in issue to prove value of the
22 information in Specifications 8 and 16 of Charge II. The Court will
23 take judicial notice of f and g.

1 Adjudicative Facts: Reference Materials:

2 The existence of Army Regulation 25-1, dated 13 November --
3 excuse me, I've already read those as well. I won't read them again.
4 The references in AR 25-1, AR 25-2, and DoD 5400-R are relevant to a
5 fact at issue in Specification 16 of Charge II to prove that the
6 information stolen was a thing of value to the United States and are
7 also relevant to a fact at issue in Specification 4 of Charge III to
8 prove that the accused used an information system for a manner other
9 than its intended use. The Court will take judicial notice of h and
10 i.

11 Now, before I proceed with the rest of this, I do want to
12 ask, Defense, I'm taking judicial notice of the definition of
13 information system for the government and AR 25-2. Does the defense
14 want me to take the definitions of information systems that you gave
15 me with respect to litigating this motion in AR 25-1 and I forgot the
16 other publication that you gave me.

17 ADC[CPT TOOMAN]: No, ma'am.

18 MJ: Okay. I'll continue on with the ruling then.

19 Adjudicative Facts: Miscellaneous j.

20 Thanksgiving of 2009 occurred on 26 November 2009; k and l
21 were the IS and Islandic officials and m was the Internet chat lingo.
22 The Defense does not object to the Court taking judicial notice of j.
23 The terms and names in k and l were used by the accused in searches

1 on Intelink and chats with Press Association/Julian Assange
2 (Prosecution Exhibits 81; 123; and 127). The facts at k and l are
3 relevant to explain to the fact-finder the terms used in the searches
4 and chats by the accused and are also relevant to whether the accused
5 acted wantonly for Specification 1 of Charge II. The Government has
6 provided no references for m other than a chart of chat terms and
7 translations prepared by an unknown person or entity. The facts at m
8 are not adjudicative facts capable of accurate and ready
9 determination by resort to sources whose accuracy cannot reasonably
10 be questioned. The Court will take judicial notice of j, k, and l.
11 The Court will not take judicial notice of m.

12 Ruling: The Defense motions for judicial notice are
13 Granted. The Government motions for judicial notice are Granted in
14 Part. The Court will take judicial notice of a through l. The Court
15 will not take judicial notice of m meanings of internet chat lingo.

16 Is there anything further with respect to this ruling?

17 CDC[MR. COOMBS]: No, ma'am.

18 TC[MAJ FEIN]: No, ma'am.

19 MJ: All right. I'll have this ruling marked as the next
20 Appellate Exhibit in line. As I was reading it I was noticing a
21 couple of typos and will go ahead and mark this but I'm going to do a
22 corrected copy and I believe the court reporter told me that would be
23 Appellate Exhibit 582.

1 Is there anything else we need to address before we
2 proceed?

3 TC[MAJ FEIN]: Yes, ma'am. There's one housekeeping issue from
4 yesterday. During the closed session the United States offered and
5 had admitted three pieces of evidence and the United States can put
6 that on the public record what, at least the unclassified
7 description.

8 MJ: Go ahead.

9 TC[MAJ FEIN]: First was Prosecution Exhibit 154, the
10 description is it was the -- it was index.dat document migration
11 summary, classified. Prosecution Exhibit 166 is a memorandum, Bates
12 number 00374994-00374996, which is one of the two charged documents
13 for Specification 3 of Charge II. And Prosecution Exhibit 167 is a
14 memorandum, Bates number 00374990 through 00374993, which is the
15 second of two documents for the charged documents for Specification 3
16 of Charge II.

17 MJ: All right. Thank you. Any other administrative matters we
18 need to address?

19 TC[MAJ FEIN]: No, ma'am.

20 CDC[MR. COOMBS]: No, Your Honor.

21 MJ: All right. Government, please proceed.

22 ATC[CPT MORROW]: United States recalls Special Agent Mark
23 Mander.

1 SPECIAL AGENT MARK MANDER, was recalled as a witness for the
2 prosecution, was reminded he was still under oath, and testified as
3 follows:

4 DIRECT EXAMINATION

5 Questions by the assistant trial counsel [CPT Morrow]:

6 Q. Agent Mander, I'm going to ask you to identify a couple of
7 documents, okay?

8 A. Okay.

9 ATC[CPT MORROW]: I'm retrieving Prosecution Exhibits 31 Alpha
10 and 32 Alpha for Identification. I'm showing them to defense
11 counsel.

12 Q. Agent Mander, I'm handing you Prosecution Exhibits 31 Alpha
13 and 32 Alpha for Identification. Can you take a look at those,
14 please?

15 A. Okay.

16 Q. Do you recognize those documents?

17 A. I do.

18 Q. And what are they?

19 A. These are two documents that basically contain information
20 from Twitter from the WikiLeaks Twitter account.

21 Q. Okay. And I want to be very specific about what they are.
22 Is it an image of something? Can you describe that, please?

1 A. These are what we would call a screen capture. It's
2 basically what I saw on my computer screen at the time that I went to
3 these particular URLs.

4 Q. And can you describe the process of creating a screen
5 capture or what you do in this case for these two documents?

6 A. In the case of these two documents I navigated to the
7 Twitter web page and specifically the location that contained these
8 two messages on the Twitter website, and then basically made a copy
9 of what was on my computer screen, placed that copy into a PowerPoint
10 document, and then printed out those two pages, or these two pages,
11 and then initialed the bottom right of each page.

12 Q. And when did you do all this?

13 A. This was, excuse me, sometime last year, I believe it was
14 in August of last year.

15 ATC[CPT MORROW]: Permission to publish, Your Honor.

16 MJ: Go ahead.

17 **[There was a brief pause while the assistant trial counsel published**
18 **the exhibit to the Court and the witness.]**

19 Q. Agent Mander, I'm going to show you 31 Alpha first, okay?

20 A. Okay.

21 Q. I know it's a little difficult to see. But really what I'm
22 concerned with is the very top line, the HTTP://Twitter.com; was that
23 part of the screen capture?

1 A. That was not.

2 Q. What is that? Why was that added?

3 A. I added that in because I noticed at the resolution to
4 shrink down the screen capture to get it all on one page it makes the
5 actual address, which is what that is, above kind of hard to see, so
6 I just added that in there just so it would make it a little easier
7 to identify what I was actually looking at, at the time.

8 Q. How did you create that line of information then
9 specifically?

10 A. I pasted the screen capture of the site that was on my
11 computer screen which is basically the rectangular box.

12 Q. I'm specifically referring to the web address.

13 A. Right. And then just added the web address as a text box
14 inside the Power Point document.

15 Q. Okay. And those are your initials in the bottom right-hand
16 corner?

17 A. They are.

18 Q. I'm going to show you 32 Alpha at this time. And, again,
19 was it the same process to create the web address at the very top,
20 the HTTP://Twitter?

21 A. Yes.

22 Q. And, again, are those your initials on the bottom right-
23 hand corner?

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.